The Laws of War and Naval Strategy in Great Britain and the United States 1899-1909

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Abstract

The decade from 1899 to 1909 was a critical period in the development of naval strategy. The 1899 and 1907 Peace Conferences and the 1909 London Conference debated, drafted, and formally imposed the laws of war on naval warfare. Consideration of the issues raised by the laws of naval warfare were vitally important for the Royal Navy – the acknowledged leading naval power in the world – and the US Navy – a small but ambitious force stepping onto the world stage following the Spanish-American War. Both navies were concerned about the impact of the laws of naval warfare on their strategic naval planning and sought to mould them to suit their own situations. The historiography of the pre-First World War era, however, has generally disregarded or minimized the significance of the laws of naval warfare for the navies of Great Britain and the United States. The numerous analyses by modern historians of naval strategy before the First World War ignore the 1899 Peace Conference and at best only tangentially consider the laws naval warfare from about 1905 onward. This thesis fills this lacuna in the research and returns the laws of naval warfare to their proper place as an important factor in naval planning in both countries. It establishes the foundational nature of the long-ignored 1899 Peace Conference, and reveals the significant planning and discussions in Great Britain and the United States with respect to the laws of naval warfare, the internal debates and conflicts that arose between the views and objectives of the naval leadership and their respective civilian authorities, and the conflicts that surfaced between the two countries, particularly at the 1907 Peace Conference. This thesis thereby provides new insights and adds to the vibrant discussion of naval history prior to the First World War.

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Finally, I have to thank the one person who has sacrificed the most, and who has put up with piles of papers, messy rooms, numerous research trips, and much else beyond my comprehension: my wife, Ann. I could say more, but hopefully she knows how much her support has meant. This thesis is dedicated to her.

Abbreviations

ADM	Admiralty Files, The National Archives, Kew, UK
AJB/BL	Arthur J. Balfour Papers, Additional Manuscripts, British Library, London, UK.
BL	The British Library, London, UK
CAB	Cabinet Files, The National Archives, Kew, UK
Choate Papers	Joseph Hodges Choate Papers, MSS 15768, Library of Congress Manuscript Division, Washington, DC.
Cobb (2013)	Stephen Cobb, *Preparing for Blockade 1885-1914: Naval Contingency for Economic Warfare* (Farnham, UK: Ashgate, 2013).
Coogan (1981)	John W. Coogan, *The End of Neutrality: The United States, Britain and Maritime Rights, 1899-1915* (Ithaca, NY: Cornell University Press, 1981).
Crowe Papers	Papers of Sir Eyre Crowe, MS. Eng., Bodleian Library, Oxford, UK
Davis (1962)	Calvin DeArmond Davis, *The United States and the First Hague Peace Conference* (Ithaca, NY: Cornell University Press, 1962).
Davis (1975)	Calvin DeArmond Davis, *The United States and the Second Hague Peace Conference: American Diplomacy and International Organization, 1899-1914* (Durham, NC: Duke University Press, 1975).
ESHR	Papers of Viscount Esher (Reginald Brett), GBR/0014/ESHR, Churchill Archive Centre, Churchill College, Cambridge, UK
FGDN [vol.]	Arthur J. Marder, ed., *Fear God and Dread Nought: The Correspondence of Admiral of the Fleet Lord Fisher of Kilverstone*. Vol. I: *The Making of an Admiral, 1854-1904* (Oxford, UK: Alden Press, 1952); Vol. II: *Years of Power, 1904-1914* (London: Jonathan Cape, 1956).
FISR	Papers of 1st Lord Fisher of Kilverstone, GBR/0014/FISR, Churchill Archives Centre, Churchill College, Cambridge, UK
FO	Foreign Office Files, The National Archives, Kew, UK

FRUS [year]	United States Department of State, *Papers Relating to the Foreign Relations of the United States* (Washington, DC: Government Printing Office, [various years])
Grimes (2012)	Shawn T. Grimes, *Strategy and War Planning in the British Navy, 1887-1918* (Woodbridge, UK: Boydell Press, 2012).
Hardinge Papers	Papers of Charles Hardinge, 1st Baron Hardinge, MSS U927, Cambridge University Library, Cambridge, England
Hay Papers	John Hay Papers, microfilm 15,213-23P, Library of Congress Manuscript Division, Washington, DC
Hicks Beach Papers	Sir Michael Edward Hicks Beach Papers, D2455/X4, Gloucestershire Archives, Gloucester, UK.
Hill Papers	David Jayne Hill Papers, Rush Rhees Library, University of Rochester, Rochester, NY
Holls/Columbia Papers	Frederick William Holls Papers, MS #0606, Butler Library, Columbia University, New York, NY
Holls/Harvard Papers	Frederick William Holls Papers, MS Am 1308, Houghton Library, Harvard University, Cambridge, MA
N. Lambert (2012)	Nicholas A. Lambert, *Planning Armageddon: British Economic Warfare and the First World War* (Cambridge, MA: Harvard University Press, 2012).
LCMD	Library of Congress Manuscript Division, Washington, DC
Lemnitzer (2014)	Jan Martin Lemnitzer, *Power, Law and the End of Privateering* (Basingstoke, UK: Palgrave Macmillan, 2014).
Low Papers	Seth Low Papers, MS Coll/Low, Butler Library, Columbia University, New York, NY
LP/ATM	Robert Seager, II and Doris D. Maguire, eds. *Letters and Papers of Alfred Thayer Mahan*. Vols. II, III. Annapolis, MD: Naval Institute Press, 1975.
Mackay (1973)	Mackay, Ruddock F. *Fisher of Kilverstone*. Oxford, UK: Clarendon Press, 1973.
Mahan Papers	A.T. Mahan Papers, microfilm 19,175-12P, Library of Congress Manuscript Division, Washington, DC (unless otherwise indicated, all referenced materials are from container 3, reel 3, folder 'Holls controversy')

Marder (1940)	Arthur J. Marder, *The Anatomy of British Sea Power: A History of British Naval Policy in the Pre-Dreadnought Era, 1880-1905* (New York: Alfred A. Knopf, 1940).
Marder (1961)	Arthur J. Marder, *The Road to War, 1904-1914*, vol. I of *From the Dreadnought to Scapa Flow: The Royal Navy in the Fisher Era, 1904-1919* (London: Oxford University Press, 1961).
McKinley Papers	William McKinley Papers, microfilm 12,411-98P, Library of Congress Manuscript Division, Washington, DC
NARA(I)	United States National Archives and Records Administration I, Washington, DC
NARA(II)	United States National Archives and Records Administration II, College Park, MD
NWCNHC	United States Naval War College, Naval Historical Collection, Newport, RI
Offer (1989)	Avner Offer, *The First World War: An Agrarian Interpretation* (Oxford, England: Oxford University Press, 1989).
PRO	Public Record Office Files, The National Archives, Kew, UK
RA	Royal Archives, Windsor Castle, Windsor, United Kingdom
RG	Record Group
Root Papers	Elihu Root Papers, MSS 38307, Library of Congress Manuscript Division, Washington, DC
RSDM/NWC	Robert Seager, II and Doris Maguire Collection, manuscript collection 43, Naval Historical Collection, Naval War College, Newport, RI
Salisbury Papers	Papers of Robert Arthur Talbot Gascoyne-Cecil, 3rd Marquess of Salisbury, Hatfield House, Hatfield, Hertfordshire, UK
Savage (1934)	Carlton Savage, *1776-1914*, vol. I of *Policy of the United States Toward Maritime Commerce in War* (Washington, DC: GPO, 1934).
Scott Papers	Papers of Sir Charles Stewart Scott, Western Manuscripts, The British Library, London, UK

JBScott/Georgetown Papers	James Brown Scott Papers, GTM.660503, Lauinger Library, Georgetown University, Washington, DC
Seligmann (2012)	Matthew S. Seligmann, *The Royal Navy and the German Threat, 1901-1914: Admiralty Plans to Protect British Trade in a War Against Germany* (Oxford, UK: Oxford University Press, 2012).
Semmel (1986)	Bernard Semmel, *Liberalism & Naval Strategy: Ideology, Interest, and Sea Power during the Pax Britannica* (Boston: Allen & Unwin, 1986).
Slade Papers	Papers of Admiral Sir Edmond John Warre Slade, The Caird Library, National Maritime Museum, Greenwich, UK
Sperry Papers	Charles S. Sperry Papers, MSS 40923, Library of Congress Manuscript Division, Washington, DC
Sumida (1989)	Jon Tetsuro Sumida, *In Defence of Naval Supremacy: Financial Limitation, Technological Innovation and British Naval Policy, 1889-1914* (Annapolis, MD: Naval Institute Press, 2014 [1989]).
Tweedmouth Papers	Edward Marjoribanks, 2nd Baron Tweedmouth Papers, MSS 254, National Museum of the Royal Navy, Portsmouth, UK
WO	War Office Files, The National Archives, Kew, UK
White Papers	Andrew Dickson White Papers, #01-02-02, Kroch Library, Cornell University, Ithaca, NY

Introduction

Between mid-1899 and early 1909, the leading maritime powers in the world met on three separate occasions. At the 1899 and 1907 Peace Conferences held at The Hague and the 1909 London Naval Conference, they debated, drafted and formally adopted laws of war on naval warfare. During this critical period of naval technological change and development, consideration of the issues and problems raised by the laws of naval warfare were vitally important for Great Britain's Royal Navy (the acknowledged leading naval power in the world) and the US Navy (a small but ambitious force stepping onto the world stage following the Spanish-American War). Indeed, the laws of war can influence strategic planning in a number of ways. Weapons may be outlawed or their use limited. The laws of war may circumscribe the manner or extent to which warfare may be conducted and who its targets may be. More generally, the laws of war may approve, limit, or prohibit strategic actions that otherwise might be planned or preferred. As Admiral Sir Cyprian Bridge presciently observed only a few months before the beginning of the 1907 Conference, regulations governing the conduct of war 'cannot be ignored in a study of naval warfare and the strategy that should guide its operations. The strategist may have to reckon with the international jurist as well as with the enemy.'[1] Brian Ranft concurred more than seventy years later, writing, 'The acceptance of such restraints [on the conduct of naval warfare] raised fundamental questions about the utility of maritime strategy and operations.'[2] Another scholar similarly concluded:

> The law thus plays a central role in clarifying by way of restrictions the goals set for sea power, the range of available options for its exercise and the classification of situations whose indeterminate character could otherwise lead to diffusion of energies and resources. The study of law

[1] Cyprian Bridge, *The Art of Naval Warfare: Introductory Observations* (London: Smith, Elder, 1907), 162.

[2] Brian Ranft, 'Restraints on War at Sea Before 1945', in *Restraints on War: Studies in the Limitation of Armed Conflict*, ed. Michael Howard (Oxford, UK: Oxford University Press, 1979), 39.

in relation to sea power is, for this reason, a valid and important aspect of the responsibility of naval planning staffs.[3]

However, the historiography of the pre-First World War era has generally disregarded or minimized the significance of the laws of naval warfare for the navies of Britain and the US. The numerous analyses of naval strategy before the First World War ignore the 1899 Conference and only tangentially consider the laws of naval warfare (to the extent they consider them at all) from about 1905 onward. Most research has been focused on other aspects of naval planning in Britain, often in comparison with Imperial Germany. None of the research considers in any depth the development of the laws of war during the first decade of the twentieth century in relation to naval thinking and planning. No work compares the laws of war and naval planning in Britain and the US during this period. The Royal Navy began the era as the world's undisputed sea power. The US Navy was comparatively small and of no strategic concern to the Royal Navy. The Royal Navy sought to modify and use the laws of naval warfare to maintain its pre-eminence in the world while the US Navy sought to ensure that the laws promoted its growth into a blue-water fleet in the Mahanian tradition. The divergent positions of the two forces coalesced and converged until their views on the laws of naval warfare were nearly identical. At the same time, naval leaders in Britain and the US often found themselves in conflict with their civilian masters. In both countries, civilian leaders sought more restrictions on naval warfare, thereby limiting each navy's freedom of action in strategic planning and execution of plans in time of war. The governments of Great Britain and the US viewed international conferences as opportunities to limit naval armaments and expenditures, much to the consternation and dismay of their navies. Different views – expressed internally and externally – often depended upon whether the country thought it was likely to be a belligerent or a neutral in the next war.

The failure of historians to adequately consider the laws of war and their impact on naval planning commenced from the very beginning of major studies of the pre-First World War era. Arthur J. Marder, in *The Anatomy of British Sea Power*, covered the 1899 Peace Conference in a single chapter entitled, 'The Hague Fiasco'.

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[3] D.P. O'Connell, *The Influence of Law on Sea Power* (Annapolis, MD: Naval Institute Press, 1975), 4.

But his meagre consideration of the event focused on preliminaries of the conference, arms expenditures, and the retirement of Admiral Sir Frederick Richards from the Admiralty in August 1899, after the conference had ended. Marder devoted most of his discussion to the reaction of the English popular press to the Tsar's invitation to hold a conference and less than three pages to the conference itself.[4] Marder revealed the likely reason for his lack of analysis in a draft article written decades later. In August 1938 he had been granted access to every file he requested from the Admiralty covering the 1880-1905 time period except for two, one of which was the Admiralty's file on the 1899 Conference, for reasons never disclosed to him.[5] Since *The Anatomy of British Sea Power*, research on the laws of war and British naval planning has become more difficult. While the Admiralty's file on the 1899 Conference largely still exists,[6] many records were culled and destroyed during the 1950s and 1960s and essentially none of the Admiralty's files relating to the 1907 Conference or the 1909 London Conference remain.[7] Not surprisingly, therefore, in his post-Second World War volumes, Marder devoted even less attention to the 1907 Conference and the 1909 London Naval Conference than the 1899 Conference. He spent a few pages discussing the failure of the 1907 Conference to achieve a reduction in the naval arms race and the 'disastrous consequences' flowing from that failure.[8] Marder did not investigate the internal preparations at the Admiralty for the conference or the implications for naval planning of the various laws of naval warfare under discussion. He did not consider the 1909 London Conference at all.

Marder's works were followed by the studies of Paul M. Kennedy, whose books *The Rise and Fall of British Naval Mastery* and *The Rise of Anglo-German*

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[4] Marder (1940), 341-352.

[5] Marder, 'Fate Knocks Three Times', p. 4 (n.d.), Box 32, Arthur J. Marder Papers, MS-F 002, Special Collections and Archives, Langson Library, University of California, Irvine, CA. (In September 2013, the author was the first researcher allowed complete access to all of Marder's research papers held at the University of California at Irvine. Previous researchers had been denied access to at least three boxes of materials.)

[6] See 'Case 258', ADM 116/98.

[7] Seligmann (2012), 96 note 25, 176.

[8] Marder (1961), 130-135.

Antagonism have been hailed as 'landmarks in naval history.'[9] The former volume reviewed British naval grand strategy comprehensively and described itself as the 'first detailed reconsideration of the history of British sea power since that presented in A.T. Mahan's classic *The Influence of Sea Power upon History*'.[10] The critical pre-First World War period was labelled as one of decline for the Royal Navy in which competition and antagonism with Imperial Germany grew.[11] But the implications of the two conferences at The Hague did not merit analysis. Kennedy's later work, devoted to the development and growth of the rivalry between Britain and Germany, also neglected consideration of the adaptation and adoption of the laws of war to naval warfare, merely stating that the unsurprising failure of the 1907 Conference to achieve agreement on naval limitations increased the naval arms race between the two countries.[12]

The revisionist interpretation of pre-First World War Royal Navy policies started by Ruddock F. Mackay's biography of Admiral Sir John Arbuthnot Fisher[13] has been fervently propounded and expanded by Jon Tetsuro Sumida and Nicholas Lambert. Sumida argued that limitations in naval budgets played an unappreciated role in British naval planning. He also pointed to the development of a new fire control system for ships as a critical feature, both of which contradicted arguments of a general decline in the Royal Navy's world position and the fixation on Germany as a factor in naval strategic planning in the first decade of the twentieth century.[14] Nicholas Lambert founded his monograph on 'the premise that from the beginning of the twentieth century the overriding problem for British defence planners was the

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[9] Andrew D. Lambert, 'The Construction of Naval History 1815-1914', *The Mariner's Mirror* 97, no. 1 (Feb. 2011): 219.

[10] Paul M. Kennedy, *The Rise and Fall of British Naval Mastery* (Amherst, NY: Humanity Books, 1998), xxvii.

[11] Ibid., 205-237. For a contrary view, see Keith Neilson, '"Greatly Exaggerated": The Myth of the Decline of Great Britain before 1914', *The International History Review* 13, no. 4 (Nov. 1991): 695-725.

[12] Paul M. Kennedy, *The Rise of the Anglo-German Antagonism 1860-1914* (Amherst, NY: Humanity Books, 1980), 442.

[13] Mackay (1973).

[14] Sumida (1989); Jon Tetsuro Sumida, 'Sir John Fisher and the *Dreadnought*: The Sources of Naval Mythology', *The Journal of Military History* 59 (October 1995): 619-638.

insufficiency of central government finance.'[15] But neither Sumida nor Lambert considered the laws of naval warfare particularly relevant to their analyses. The considerable amount of time and effort spent by the Admiralty preparing for the conferences again were ignored. Moreover, neither Sumida nor Lambert discussed the efforts of the British government to use the opportunities presented by the two conferences to achieve reductions in expenditures by proposals for naval disarmament.

The revisionist interpretation of pre-First World War British naval policy lately has morphed into an argument that naval planning, at least for some time after the 1907 Conference, was fixated on use of an economic blockade to bring Germany to her knees in any future war. Avner Offer first argued that British naval strategy planned to use an economic blockade against Germany, regardless of the precepts of international law.[16] Offer's analysis begins a year or two before the 1907 Conference. He recognizes that under his interpretation, 'The Royal Navy helped to negotiate, codify and promote a legal code that clashed with some of its own strategic ideas.'[17] Offer suggests that either the British naval delegates at the 1907 Hague Conference did not receive clear instructions or that First Sea Lord Fisher considered the rule of law of no moment in naval planning unless it was to Britain's advantage.[18] Offer's view is a jaundiced one as to the relevance of the laws of war in general. Moreover, neither suggestion addresses the time and effort spent by the Royal Navy considering the laws of war or the internal planning before the 1907 Conference. Offer's work does not deal with the efforts undertaken by the Royal Navy during the conference to achieve adoption of laws of naval warfare considered desirable to it.

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[15] Nicholas Lambert, *Sir John Fisher's Naval Revolution* (Columbia, SC: University of South Carolina Press, 1999), 1.

[16] Offer (1989), 233-243, 270-284; Avner Offer, 'Morality and Admiralty: "Jacky" Fisher, Economic Warfare and the Laws of War', *Journal of Contemporary History* 23, no. 1 (Jan. 1988): 99-118.

[17] Offer (1989), 270.

[18] Ibid., 278-279. Brian Ranft has argued that destruction of an enemy's maritime trade and the effect of technological change would determine whether restraints on naval warfare were followed during war. Ranft, 'Restraints on War at Sea Before 1945', 39-43.

Nicholas Lambert recently has offered a self-described 'radical reinterpretation of the nature and significance of the relationship between economics and sea power before and during the First World War.' Lambert 'focuses on Great Britain's development of a novel and highly sophisticated approach to economic coercion in the event of war against Germany',[19] which was secretly planned and developed by a small group of individuals. In doing so, he pays minimal attention to the laws of war and develops his thesis primarily over the period from 1908 to 1915. He argues that the economic warfare plan was abandoned early in the First World War because it was too effective and inflicting too much collateral damage on the US.[20] His analysis does not consider the 1899 Conference. Furthermore, Lambert's brief discussion of the Admiralty's extensive planning and preparations for the 1907 Conference leaves much to be desired. However, Lambert recently has recognized that 'interpretations of international law had to be considered paramount in the formulation of maritime strategy, especially where it involved interdiction of communications' in the years before the First World War.[21]

The revisionists have generated 'neo-revisionists', who have sought to combine the original focus on Germany of Marder and Kennedy with economic means of warfare or a different analysis. They have especially challenged the arguments of Nicholas Lambert, which has resulted in vigorous, if not excessively personal, attacks on each other's views.[22] Shawn Grimes challenges the revisionists

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[19] N. Lambert (2012), 1.

[20] Ibid., 85-101, 497-504.

[21] Nicholas A. Lambert, 'False Prophet?: The Maritime Theory of Julian Corbett and Professional Military Education', *The Journal of Military History* 77, no. 3 (July 2013): 1074. John Coogan critiques Lambert's inaccurate consideration of international law in *Planning Armageddon* in John W. Coogan, 'The Short-War Illusion Resurrected: The Myth of Economic Warfare as the British Schlieffen Plan', *The Journal of Strategic Studies* 38, no. 7 (Nov. 2015): 1045-1064.

[22] For examples of the attacks and counter-attacks, see Christopher M. Bell, 'Sir John Fisher's Naval Revolution Reconsidered: Winston Churchill at the Admiralty, 1911-1914', *War in History* 18, no. 3 (2011): 333-356; Nicholas A. Lambert, 'On Standards: A Reply to Christopher Bell', *War in History* 19, no. 2 (2012): 217-240; Christopher M. Bell, 'On Standards and Scholarship: A Response to Nicholas Lambert', *War in History* 20, no. 3 (2013): 381-409.

Most recently, the neo-revisionists have assaulted the research and reasoning underpinning the works of Sumida and Nicholas Lambert in an entire issue of *The*

and has argued, 'Revisionist historians have further confused the issue [of naval war planning] through their alternative theories, arguing that Germany's naval programme was not considered a serious threat until after 1905 while underplaying the wider diplomatic, international, and intellectual contexts that clearly influenced British naval strategy during the Fisher regime.'[23] Grimes contends that the Admiralty possessed coherent war planning based on manoeuvres, war games, intelligence reports, and education from the late 1880s forward and that those plans began to be redirected toward Germany as early as 1902. He rejects the idea that Admiralty war plans were based merely on the views of senior officers.[24] However, despite criticizing the revisionists for not considering 'the wider diplomatic, international, and intellectual contexts', he too essentially ignores the 1899 and 1907 Conferences in his analysis.

Matthew Seligmann also counters the revisionists and argues that Germany became a focus of British naval war planning much earlier than the revisionists would allow, and that the vulnerability of maritime commerce and hence its protection during time of war was the critical issue for the Admiralty during the years leading up to the First World War. He focuses on the threat of armed merchant cruisers to British seaborne trade; a threat that did not in fact develop once war came. Seligmann does consider the laws of war in his analysis, but basically only from the 1909 London Conference onward. He emphasizes the efforts of Rear Admiral Edmond

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Journal of Strategic Studies. See Christopher M. Bell, 'The Myth of a Naval Revolution by Proxy: Lord Fisher's Influence on Winston Churchill's Naval Policy, 1911-1914', *The Journal of Strategic Studies* 38, no. 7 (Nov. 2015): 1024-1044; John Brooks, 'Preparing for Armageddon: Gunnery Practices and Exercises in the Grand Fleet Prior to Jutland', ibid., 1006-1023; Coogan, 'The Short-War Illusion Resurrected', ibid., 1045-1064; Stephen McLaughlin, 'Battlelines and Fast Wings: Battlefleet Tactics in the Royal Navy, 1900-1914', ibid., 985-1005; David Morgan-Owen, 'A Revolution in Naval Affairs? Technology, Strategy and British Naval Policy in the "Fisher Era"', ibid., 944-965; Matthew S. Seligmann, 'Naval History by Conspiracy Theory: The British Admiralty before the First World War and the Methodology of Revisionism', ibid., 966-984; Matthew S. Seligmann and David Morgan-Owen, 'Evolution or Revolution? British Naval Policy in the Fisher Era', ibid., 937-943.

[23] Grimes (2012), 2. See also Shawn T. Grimes, 'The Baltic and Admiralty War Planning, 1906-1907', *The Journal of Military History* 74, no. 2 (April 2010): 407-437.

[24] Grimes (2012), 2-6, 225-234.

Slade to change the laws of war at the London Conference, principally relating to the right of a belligerent to convert merchant ships into warships.[25] While Seligmann thus admits of the relevance of the laws of war to strategic planning, he neither goes back to the 1899 Conference nor considers issues pertinent to topics other than commerce protection. Instead, he decries the destruction of most of the Admiralty's records relating to the 1907 Conference and the difficulties created thereby.[26] However, as this study shows, much can be gleaned from a careful analysis of Foreign Office and other archival sources, as well as from sources in the US.

Stephen Cobb recently has joined the debate, arguing that the Admiralty planned and prepared extensively for blockade warfare and defence of British trade in a European war utilizing armed merchant cruisers. He contends that economic warfare utilizing armed merchant ships was more widely anticipated and planned before the First World War than previously understood and that it was widely recognized that an 'economic and naval war against a major maritime power would be violent, *à l'outrance*, and would not be "over by Christmas".'[27] In presenting his argument for a strategic culture in the Royal Navy favouring blockade warfare with armed merchant cruisers, Cobb briefly considers the laws of naval warfare relevant to his thesis, including belligerent and neutral rights, contraband, seizure of private property, blockade, and conversion of merchant ships into armed vessels on the high seas following a declaration of war. His analysis, however, only touches upon the 1907 Conference and the 1909 London Conference. The 1899 Conference receives no mention.[28]

While research of the Royal Navy and British naval planning in the years before the First World War may be described as extensive, vibrant, and on-going, the same cannot be said of studies of the US Navy during the pre-First World War era. Standard treatments of US naval history do not address the 1899 and 1907 Conferences or the effect of the laws of war on naval planning and strategy in the

[25] Seligmann (2012), 4-6, 89-108, 171-173.

[26] Ibid., 96.

[27] Cobb (2013), xxi.

[28] See ibid., 61-76.

nascent navy.[29] Calvin DeArmond Davis published two volumes more than forty years ago regarding the United States and the two peace conferences. While both are useful introductions, neither analysed the positions taken by the US in the context of naval planning or the laws of naval warfare.[30] Several more recent studies do provide interesting comparative analyses. Dirk Bönker studied the similarities between the naval elites in the US and Germany and contends that they pursued naval growth 'along strikingly similar, and parallel, national trajectories in the new global age' of the years before the First World War.[31] Bönker presents a well-considered comparison of the two countries, and shows the similar positions and views of Germany and the US at the 1907 Conference and the 1909 London Conference.[32] Katherine Epstein's recent monograph provides a comparative study of torpedo development and intellectual property law in the United and Britain.[33] Neither of these recent studies, however, considers the laws of naval warfare and naval planning in the US. But the US Navy was at the forefront of navies worldwide in adopting a formal naval war code in June 1900.[34] Despite its withdrawal in early 1904, the 1900 Naval War Code formed the basis for the United States' positions at both the 1907 Hague Conference and the 1909 London Conference. The 1905 *International Law Studies* of the United States Naval War College was carefully studied in Britain and the United States in preparation for the 1907 Conference.

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[29] See for example, George W. Baer, *One Hundred Years of Sea Power: The U.S. Navy, 1890-1990* (Stanford, CA: Stanford University Press, 1993); Kenneth J. Hagan, *This People's Navy: The Making of American Sea Power* (New York: Free Press, 1991); Harold Sprout and Margaret Sprout, *The Rise of American Naval Power, 1776-1918*, with an introduction by Kenneth J. Hagan and Charles Conrad Campbell (Annapolis, MD: Naval Institute Press, 1990 [1966 rev. ed.].

[30] See Davis (1962); Davis (1975).

[31] Dirk Bönker, *Militarism in a Global Age: Naval Ambitions in Germany and the United States Before World War I* (Ithaca, NY: Cornell University Press, 2012), 4.

[32] Ibid., 158-164.

[33] Katherine C. Epstein, *Torpedo: Inventing the Military-Industrial Complex in the United States and Great Britain* (Cambridge, MA: Harvard University Press, 2014).

[34] See Charles H. Stockton, *The Laws and Usages of War at Sea: A Naval War Code* (Washington, DC: Government Printing Office, 1901); General Board of the Navy to the President, 30 Jan. 1904, RG 80, folder 438-7, NARA(I); Roosevelt to Moody, 30 Jan. 1904, RG 80, folder 438-7, NARA(I).

One important bridge does somewhat connect the scholarship regarding the Royal Navy in the pre-First World War era with that of the US Navy. Written more than thirty years ago, John W. Coogan's *The End of Neutrality: The United States, Britain, and Maritime Rights, 1899-1915*, reviews and analyses 'the legal as well as the strategic and political contexts in which British statesmen evolved the blockade of Germany and American leaders responded to the consequent curtailment of trade.'[35] Coogan's work, however, was focused more on foreign policy and diplomacy than naval planning. He sought to explain the development of the United States' positions on maritime rights and how the country eventually was forced by a desire to maintain its relationship with Britain to forego its status as a 'neutral' by 1915. As part of this explanation, and contrary to Offer's view, Coogan concludes, 'that a viable system of international law did exist in 1914.'[36] Coogan devotes little space to the 1899 Conference and focuses on the question of immunity of private property at sea. He does not consider broader issues of the laws of naval warfare or their implications for naval planning beyond Britain's efforts to impose a blockade on Germany.

As this historiographical review shows, a lacuna in the research exists regarding the laws of war and naval strategy in Britain and the US during the first decade of the twentieth century. Neither the orthodox historians, nor the revisionists, nor the neo-revisionists have carefully considered and analysed the role played by the laws of war in naval planning in these two countries. While some scholars have touched upon some of the issues, their focus generally has been on the period from about 1905 to the beginning of the First World War. No one has fully described and analysed the topic by comparing Britain and the US during the 1899 to 1909 era.

The primary goal of this study is to return the laws of naval warfare to its proper place as an important factor in pre-First World War naval planning in Great Britain and the United States. To be sure, this is not to say that attention to the laws of naval warfare was the be-all and end-all of naval planning in Britain and the US. But this thesis will establish that in both nations, the laws of naval warfare were of much greater importance than has been the traditional view of naval historians. Furthermore, the development, adaptation, and adoption of the laws of naval warfare

[35] Coogan (1981), 15.

[36] Ibid., 16.

should be viewed and considered *in toto* during this critical period, and not piecemeal or beginning with a single weapons system from some selected starting point during the era. By relying on evidence from more than twenty archives on both sides of the Atlantic, this study establishes importance of the long-ignored 1899 Conference. It also fully reveals the significant planning and discussions in Britain and the US with respect to the laws of naval warfare at three distinct international conferences held in the space of only ten years. It shows the internal debates and conflicts that arose between the views and objectives of the naval leadership and their respective civilian authorities, and the conflicts that surfaced between the two countries, particularly at the 1907 Conference. These debates and conflicts often were based on whether the laws of naval warfare were viewed from the perspective of a belligerent or a neutral. In each nation, the prevailing perspective changed over time, thereby influencing the direction taken toward the laws of naval warfare.

Chapter 1 provides a primer on the laws of naval warfare in the nineteenth century. It introduces some of the key concepts and issues that greatly affected British and American relations during the period under consideration. Chapters 2, 3, and 4 provide a comprehensive analysis of the 1899 Conference from the perspective of its influence on the laws of naval warfare. These chapters establish the conference's foundational nature for consideration of the laws of naval warfare during the 1899 to 1909 period. Chapter 2 places Tsar Nicholas II's invitation to the Great Powers to an international conference in the context of the then on-going naval arms race, particularly between Great Britain, France, and Russia. Britain's agreement to attend the conference and to discuss international maritime law – something it had refused to do since the Declaration of Paris in 1856 – opened the door for future discussions of the laws of naval war. For the Royal Navy, the proposed conference was a watershed, because it was forced to participate in an international proceeding at which limitations on naval warfare would be considered. The third chapter considers the preparations in Britain and the US for the 1899 Conference. This chapter fully reveals for the first time Britain's secret proposal to Russia for naval disarmament in advance of the conference. The serious – albeit grudging – preparations of the Admiralty for the conference are shown in stark contrast to the lack of preparations by the US Navy. Chapter 4 analyses the 1899 Conference, particularly the positions taken by the naval delegates of Great Britain and the United States – two of the

leading navalists of the era: Fisher and Mahan. The chapter challenges the traditional views of these two individuals and provides new insights into their roles as the laws of naval warfare were adapted and adopted in the first decade of the twentieth century.

Chapter 5 transitions this study from the end of the 1899 Conference to 1905. During that period, Britain and the US gained real-world experience on many of the issues relevant to the laws of naval warfare. In addition, both nations engaged in theoretical analyses that later would influence their positions on many laws of naval warfare issues. Chapters 6 and 7 cover the preparations for the 1907 Conference and the conference itself. Chapter 6 discusses and analyses the preparations in both countries for the 1907 Conference from a new perspective. It shows how Britain and the US came surprisingly close to flipping their traditional policies and adopting each other's positions on the issue of the immunity of private property at sea. Chapter 7 reviews the 1907 Conference, again focusing on the contentious issue of the immunity of private property at sea. It shows how the US and Britain clashed on that issue with adverse implications for Britain's novel proposal to abolish the concept of contraband of war. Finally, chapter 8 considers the 1909 London Conference, which resulted from Britain's failure to achieve an international agreement on blockade, contraband, or the law to be applied by the new International Prize Court at the 1907 Conference. It shows the compromises Britain and the US made to obtain a unanimous agreement among the leading maritime nations on what the laws of naval warfare were, not what they might be in the future. Contrary to conventional views, the understanding reached satisfied Great Britain's strategic needs for naval warfare. Although the leading sea powers failed to ratify the Declaration of London, it still provided guidance and a framework for the belligerents and neutrals at the beginning of the First World War. The Conclusion summarizes the argument and the contribution of this thesis to the vibrant pre-First World War naval historiography.

Chapter 1

Mare Liberum or *Mare Clausum*: The Laws of Naval Warfare In the Nineteenth Century

The nineteenth century was a period of immense change. Connected advances in technology, trade, industry, politics, and population altered the world. The changes in navies and naval warfare during this period were especially significant. At the beginning of the century, ships travelled under vast sheets of sail, dependent on the winds for movement. Wooden warships fired broadsides at one another from smoothbore muzzle loading cannon at ranges of less than a few hundred meters, while sharpshooters high in the masts fired muskets at enemy seamen below. Engagements frequently were decided by boarding the enemy ship, followed by individual combats, until one side struck its colours. Finding an enemy ship on the vastness of the oceans usually was the result of luck or an educated guess. That vastness was perhaps the best means of protecting a nation's sea borne commerce, with little more required in terms of naval strategy for merchant marine protection. By the end of the century, warships were made of steel, powered by coal-fired engines, able to reach previously unheard of speeds and travel great distances. They could move in any direction regardless of the wind, and hurl large explosive shells thousands of meters from ever more accurate breech loading rifled cannon at enemy warships protected by improved armour. New weapons, such as submarines and torpedoes – albeit in their nascent stages – meant that navies faced previously unknown methods of attack and defence in time of war. A warship could more readily and easily find its enemy as a result of new means of communication and improved navigation. The increase in merchant shipping meant commerce protection required new strategies and new ideas.[1]

[1] See Daniel R. Headrick, *The Invisible Weapon: Telecommunications and International Politics* (New York: Oxford University Press, 1991), 6-8; A.T. Mahan, *The Influence of Sea Power Upon History, 1660-1783* (Mineola, NY: Dover Publications, 1987 [1890]), 84; Bryan Ranft, 'Introduction', in *Technical Change and British Naval Policy, 1860-1939*, ed. Brian Ranft (London: Hodder and Stoughton, 1977), ix-x; Bryan Ranft, 'The protection of British seaborne trade and the development of systematic planning for war, 1860-1906', ibid., 1-5.

Despite these changes, navies and naval warfare had at least two constants throughout the nineteenth century. One was the dominance of Britain's Royal Navy. After the Napoleonic Wars, Britain was the unchallenged master of the seas. New navies, armed with the new warships and weapons appeared on the horizon during the last decades of the century. France and Russia, enemies less than forty years earlier, became allies and were the most likely opponents for the Royal Navy as the century closed. The United States also possessed growing naval ambitions. While its challenges and challengers changed as the end of the century approached and its supremacy was no longer as absolute as it had been at the beginning of the era, the Royal Navy's dominance remained.[2] The second constant was the uncertainties relating to the scope and nature of limitations on naval warfare: what a belligerent was permitted or prohibited to do against an enemy ship – whether a warship or merchant vessel – or the ships of neutral nations. The laws of naval warfare in the nineteenth century were such that one could say there was 'no uniformity of theory or practice' before 1856,[3] and also that the principles 'were established in the sixteenth and seventeenth centuries and were not in serious dispute'.[4] Both were accurate statements.

This chapter introduces the laws of naval warfare as they existed and developed in the nineteenth century as well as the tensions that arose as nations attempted to draw the line between the rights of belligerents and those of neutrals during time of war. It first introduces some of the essential concepts used throughout the century and the period under study. They were the result of decisions by courts in Britain, the United States, and elsewhere, as well as treaties and general agreement. This chapter then reviews the issues and the positions of the parties that arose during the nineteenth century. The first period considered is from the beginning of the century to the eve of the Crimean War. The second period focuses on the Declaration

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[2] See generally Paul M. Kennedy, *The Rise and Fall of British Naval Mastery* (Amherst, NY: Humanity Books, 1998 [1976]), 123-202; Paul M. Kennedy, *The Rise and Fall of the Great Powers* (New York: Vintage Books, 1989), 147-202; Marder (1940), 3-61.

[3] Bryan Ranft, 'Restraints on War at Sea Before 1945', in *Restraints on War: Studies in the Limitation of Armed Conflict*, ed. Michael Howard (Oxford, UK: Oxford University Press, 1979), 43.

[4] Cobb (2013), 61.

of Paris in 1856, which was soon followed by the American Civil War, and the issues those two events raised for naval warfare and its regulation. Finally, the last half of the century is reviewed as pressures increased to expand the rights of neutrals and Britain acted to limit discussion of the laws of naval warfare as its place as the world's leading sea power was increasingly challenged.

Essential Concepts

The laws of naval warfare developed based to a great extent on decisions by prize and appellate courts that decided the legality of the seizure or confiscation of ships or their cargoes during time of war. Often, these decisions were accepted by other countries and became agreed 'customary' international law, either through treaties or stated or unstated agreement.[5] The issues and concepts discussed in this thesis did not exist, therefore, in a vacuum. A substantial body of case law, orders, regulations, and treaties combined to create a framework within which the laws of naval warfare further developed in the nineteenth and early twentieth centuries.[6] Great Britain and the United States and their navies studied these sources carefully as the laws of naval warfare developed.[7] Although areas of disagreement existed between nations, a country's prize court decisions and orders usually revealed the likely outcome of a case brought before them. Eight of the most critical concepts relevant to this thesis are generally defined below to introduce the relevant terminology, their meaning, and relevance to naval planning and strategy.

Blockade: A 'blockade' 'is the blocking of the approach to the enemy coast or a part of it by men-of-war for the purpose of preventing ingress and egress of vessels of all nations.'[8] Any neutral vessel attempting to avoid or breach a blockade was subject to

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[5] For a contemporary (to the period under study) discussion of the development of the laws of war generally, see Thomas E. Holland, *Studies in International Law* (Oxford, UK: Clarendon Press, 1898), 40-95.

[6] For contemporary treatises discussing the laws of naval warfare, see, for example, T.J. Lawrence, *The Principles of International Law* (Boston: D.C. Heath, 1895), 397-417, 576-636; Lassa Oppenheim, *War and Neutrality*, vol. II of *International Law: A Treatise* (London: Longmans, Green, 1906), 179-225, 398-482

[7] See, for example, Anon., *Maritime Law* (London: HMSO, 1906), copy in CAB 17/85, ff. 145-180; Charles H. Stockton, ed., *Recent Supreme Court Decisions and Other Opinions and Precedents* (Washington, DC: GPO, 1904).

[8] Oppenheim, *War and Neutrality*, 398-399.

seizure by the blockading force. Whether a blockade was 'effective' or valid was a critical issue. Generally, for a blockade to be 'effective' it had to be declared by a belligerent; known by the neutral ship; and maintained by a sufficient force to 'to really prevent access' or to 'create evident danger to ships attempting to' breach the blockade. Issues existed regarding whether a blockade was a mere 'paper blockade' declared by a belligerent without warships on station to prevent ingress or egress of vessels from a blockaded port, or whether the blockade was a 'cruising blockade' in which an insufficient number of warships cruised up and down a blockaded coast or port attempting to intercept blockade runners.[9]

Continuous Voyage: The 'Continuous Voyage Doctrine' arose from British prize law and the Rule of 1765 during the Seven Years' War (1756-1763). In its original form, a neutral ship and its contraband cargo is liable to seizure under this doctrine, even if allegedly in transit between neutral ports if it could be established that the ship's ultimate destination is an enemy or belligerent port. The entire trip is considered a 'continuous voyage' to supply the belligerent. This doctrine allowed a country adhering to it to prevent circumvention of a blockade or shipment of contraband to an enemy by the insertion of an intermediate stop on a neutral vessel's voyage.[10] The primary issue regarding the doctrine, particularly during the American Civil War, was its expansion to cover more indirect efforts to deliver contraband to the enemy.

Contraband: 'Contraband' is goods or cargo that enable a belligerent 'to carry on the war with greater vigour.' Contraband traditionally was divided into two classes: 'absolute' and 'conditional'. Absolute contraband includes goods clearly intended for use by the enemy. Examples include weapons, ammunition, materials for exclusive use by the enemy, and goods that have no other use than a military one. Conditional contraband is 'dual use' goods, or goods that may or may not be used by the enemy, depending on their purchaser or destination. Examples traditionally included money, coal, timber, hay, and horses. Regardless of the nature of the goods as absolute or conditional contraband, they are not 'contraband' unless destined for the enemy. A

[9] Ibid., 338-419; Thomas E. Holland, *A Manual of Naval Prize Law* (London: HMSO, 1888), 29-38; Ranft, 'Restraints on War at Sea', 44.

[10] Holland, *Naval Prize Law*, 21-22; Oppenheim, *War and Neutrality*, 432-434; Lemnitzer (2014), 143.

belligerent was expected to declare and identify what goods it would treat in which category, especially 'conditional contraband'. A ship carrying contraband bound for the enemy was an exception to the 'Free Ship – Free Goods rule.[11] Which goods could be declared contraband as technology changed, especially conditional contraband, was the principal issue regarding the concept.

Enemy Ships – Enemy Goods: This rule relates to cargo or goods on board a ship owned or flying the flag of an enemy belligerent. In general, an enemy's merchant ship, including its cargo, could be seized during time of war. However, could goods or cargo owned by a person or company from a neutral nation on board an enemy ship be seized? Some nations adopted the view that neutral goods on board an enemy ship could be seized. Other nations took the position that such goods had to be returned to the neutral owner or an indemnity paid. Issues existed concerning how to determine ownership of the ship and its cargo.[12] As will be seen, the Declaration of Paris in 1856 recognized the principle that enemy cargo on an enemy ship could be seized.

Free Ships – Free Goods: This rule relates to cargo or goods on board a ship owned or flying the flag of a neutral or non-belligerent country. A neutral ship could be stopped to determine its ownership, the nature of the cargo on board, and its destination. Most nations accepted the rule that enemy-owned property on a neutral ship could not be seized unless it was contraband or the ship was attempting to evade a declared, lawful blockade. However, some nations took a more stringent view that any enemy property on a neutral vessel could be seized. Many issues existed regarding the manner of stopping and searching the vessel and the evidence required to establish ownership and destination.[13] As with 'Enemy Ship – Enemy Goods', the Declaration of Paris formally recognized that enemy cargo on a neutral ship could not be seized, with exceptions for contraband or attempting to evade a lawful blockade.

Immunity of Private Property at Sea in Time of War: This principle would immunize from seizure *any* privately owned property in *any* vessel during time of war, subject to

[11] Holland, *Naval Prize Law*, 20-21; Oppenheim, *War and Neutrality*, 421-445.

[12] Coogan (1981), 18-19; Ranft, 'Restraints on War at Sea', 43-44; Semmel (1986), 14-15.

[13] Coogan (1981), 18-19; Oppenheim, *War and Neutrality*, 457-482; Semmel (1986), 14-15

the exceptions of contraband and a ship attempting to violate a lawful blockade. It therefore was an elimination of the 'enemy ship – enemy goods' principle. Privately owned enemy property would not be subject to seizure regardless of whether it was on board an enemy-owned merchant ship or a neutral ship.[14] As will be seen, the United States endeavoured to secure international recognition of this principle throughout the nineteenth century and into the twentieth century. This principle was a source of great conflict between Britain and the US.

Privateers or Privateering: 'Privateers' or 'privateering' refers to the ships not crewed or owned by a belligerent nation, but which are authorized by a belligerent nation, usually pursuant to a formal document known as 'letters of marque and reprisal', to search, capture as a prize, or in some circumstances destroy, an enemy ship or a neutral ship carrying contraband intended for the enemy. A privateer could be owned and operated by a private citizen of a neutral nation or a belligerent. Privateering sometimes is referred to as 'legalized piracy'. Privateers 'were prone to abuses and tended to cause disputes wherever they operated', especially diplomatic issues.[15]

Rule of 1756: During the Seven Years' War, France formed a grand coalition to try to blunt the growing power of Great Britain and Prussia. Britain formed its own coalition. The war ranged virtually around the world. Traditionally, colonial and coastal commerce was reserved to vessels owned by a nation's citizens. France lifted this ban in order to permit neutral nations to conduct trade and thereby avoid Britain's maritime dominance. In response, Britain announced a rule, which became known as the 'Rule of 1756,' which 'declared all neutral trade during war to be illegal if the activity had been forbidden in peacetime.' Britain ended its restrictions by 1850, although France and Russia maintained their limitations for some time thereafter.[16]

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[14] Anon. (Ernest M. Satow), 'The Immunity of Private Property at Sea', *The Quarterly Review* 214, no. 426 (Jan. 1911): 1-23; Anon. (Ernest M. Satow), 'The Immunity of Private Property at Sea', *The Quarterly Review* 215, no. 428 (July 1911): 1-22.

[15] Lemnitzer (2014), 39, 42-43, 133-138.

[16] Ibid., 20.

Early Agreements and General Disagreements

In 1604-1605, Dutch jurist Hugo Grotius defended the seizure of a Portuguese merchant ship by a private vessel owned by the Dutch East India Company in a tract on prize law. Four years later, with Spain and Portugal claiming sovereignty over most of the world's oceans and therefore the right to exclude other nation's ships from their waters, Grotius published a chapter from his earlier volume to refute those claims. His small book, entitled *Mare Liberum* (the free sea), argued that no nation could exercise dominion over the seas.[17] This thesis is 'the first principle of modern international maritime law that has prevailed from the seventeenth century to the present: the open sea is free to the ships of all nations.'[18] Like Spain and Portugal, England claimed sovereignty over the waters surrounding its lands. Grotius's argument therefore did not go unchallenged, at least in Britain. An English jurist, John Selden, wrote *Mare Clausum* (the closed sea) a few years after Grotius's book, and contended that the seas could be owned and controlled just like dry land, and that 'the King of Great Britain is Lord of the Sea flowing about, as an inseparable and perpetual Appendant of the British Empire'.[19]

These two extremes – *mare liberum* or *mare clausum* – form the outer boundaries of the limitations on the conduct of naval warfare. The essential strategic goal in naval warfare is to gain closure or command of the sea, either by a climactic battle that destroys the enemy's fleet or ability to defend its commerce, or by gaining

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[17] Hugo Grotius, *The Freedom of the Seas*, trans. Ralph van Deman Magoffin, ed. James Brown Scott (New York: Oxford University Press, 1916), v-viii.

Both opponents and proponents of the principle that enemy goods on a neutral ship are subject to seizure during war later relied on Grotius's argument, because it originally was part of his work defending the seizure of enemy goods on board a neutral ship. Semmel (1986), 13-14.

[18] John B. Hattendorf, 'Maritime Conflict', in *The Laws of War: Constraints on Warfare in the Western World*, ed. Michael Howard, George J. Andreopolos, and Mark R. Shulman (New Haven, CT: Yale University Press, 1994), 98.

[19] John Selden, *Of the Dominion, or, Ownership of the Sea*, trans. Marchamont Nedham (Clark, NJ: The Lawbook Exchange, 2004 [1652]), e3. See Andrew Lambert, 'Great Britain and Maritime Law from the Declaration of Paris to the Era of Total War', in *Navies in Northern Waters, 1721-2000*, ed. Rolf Hobson and Tom Kristiansen (London: Frank Cass, 2004), 12.

control of the enemy's maritime communications.[20] However, neutrals may take the place of the belligerents' merchant vessels and supply the materials necessary to continue the fight, thereby making achievement of the essential strategic goal more difficult. A belligerent's merchant ships also may continue a profitable trade with neutrals to the benefit of their home country. To what extent are the rights of belligerents and their ships limited during war in order to further *mare liberum* or freedom of the sea? Stated oppositely, to what extent are the rights of neutrals and their ships limited during war in order to further the goal of a belligerent to gain *mare clausum* or closure of the sea? Restrictions on the type, manner, and method of use of weapons of belligerents also fit within these two boundaries. Limitations on the conduct of naval warfare thus are epitomized by a tension between the rights of neutrals and the rights of belligerents. The laws of naval warfare represent a general international agreement or understanding of where and how the line between these competing rights is drawn.

The phrase, 'the laws of naval warfare', is of course an inaccurate description. There are no such 'laws' as that word is commonly understood. No central governmental entity exists which promulgates regulations and imposes them even on unwilling subjects. No international police force or prosecutorial entity exists to detain violators and to prosecute miscreants.[21] As Jan Martin Lemnitzer recently asserted, 'international law is best understood from its starting point as a set of rules created and respected by nations in their relations with each other.' He has analogized international law to 'House Rules', for example in a condominium building, established by owners of the units. The unit owners adopt rules to govern the conduct of everyone in the building. Some rules are more important than others, but they work so long as the tenants recognize the need to follow them, because no formal enforcement mechanism exists.[22] This analogy is especially apt with regard to

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[20] Julian S. Corbett, *Principles of Maritime Strategy* (Mineola, NY: Dover Publications, 2004 [1911]), 87, 90-91; Mahan, *Influence of Sea Power*, 26-27, 539-540.

[21] Lemnitzer (2014), 2-3.

[22] *Ibid.*, 6-8.

Avner Offer asserts that compliance with international law presents the classic 'prisoner's dilemma' problem of game theory, in which the two prisoners, ignorant of the other's choice, can either trust each other (and thereby achieve the best mutual

the development of the laws of naval warfare in the nineteenth century, with Britain playing the role of the largest tenant in the building, yet having its role as arbiter and determiner of the 'house rules' challenged and reduced as more tenants with different views entered the building. For most of the century, the United States was the tenant that led the challenge.

By the beginning of the nineteenth century, some general understandings – and general disagreements – regarding the rights of belligerent and neutral merchant ships during war existed. Whether a nation supported belligerent or neutral rights usually was determined by whether it was a maritime or continental power. Britain was a maritime power and so supported expansive belligerent rights. France and the other European nations – certainly by the end of the Napoleonic Wars – were continental powers whose views tilted toward the side of neutrals. Many of these general understandings and disagreements were the result of a multitude of bilateral treaties and agreements between nations. Some nations, particularly the United States in its early years, entered into treaties with varying and often inconsistent provisions with different countries.[23] France and most nations asserted that an enemy's merchant ship, including its cargo, could be seized during time of war. However, Britain claimed such goods had to be returned to the neutral or an indemnity paid for them. In a number of early bilateral treaties, the US agreed that neutral goods on board an enemy ship were subject to seizure. Thus, for France – and in some cases the United States – an 'enemy ship = enemy goods'.[24]

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outcome), betray each other (and thereby achieve an intermediate outcome), or have one prisoner betray the other trusting prisoner (and the betrayer thereby achieves the best individual outcome while the trusting player achieves the worst individual outcome). Offer (1989), 282. The difficulty with this analogy is that in the international community of nations, the players do not remain ignorant of the other's choice. If one nation decides to ignore accepted international law, the other nation soon learns of it and reacts, thereby achieving the intermediate outcome. It also ignores the fact that adherence to international law typically is not a two player game. Thus, the highest individual outcome possible in the prisoner's dilemma is not generally achievable. The best outcome in international law results from mutual trust.

[23] See Savage (1934), 1-35, 114-118.

[24] Coogan (1981), 18-19; Ranft, 'Restraints on War at Sea', 43-44; Savage (1934), 2-3, 114-115; Semmel (1986), 14-15.

Neutral merchant ships could be stopped and searched by a belligerent warship to determine its ownership, the nature of cargo on board, and its intended destination. Such a search could be conducted in international waters or the territorial waters of the belligerent, not generally the territorial waters of a neutral. The specific procedures to be followed as well as the documentation or proof necessary to establish ownership, the nature of the cargo, and the destination of the vessel were subject to various rules. Neutral vessels, if engaging in 'unneutral service', carrying 'contraband', or attempting to evade a blockade, could be seized. Britain claimed the right to seize enemy property on board a neutral vessel. The US originally took a similar position, but soon adopted the more recognized position of France and most of the world that enemy property on a neutral vessel could not be seized unless contraband or if the ship was attempting to evade a recognized blockade. Thus, for most of the seafaring world except Britain – and in its early years, the United States – a 'free (neutral) ship = free (neutral) goods'.[25]

The two exceptions to the rule regarding immunity from seizure of enemy goods on board a neutral ship (contraband and blockade) were subject to varying interpretations. Whether goods were 'contraband' depended on their character and intended use. Contraband included weapons, ammunition, and the like. Products that might have a military or naval use depending on their ultimate destination were left to *ad hoc* determinations, based either on a declaration as to how they would be treated by a belligerent during the war or the decision of a prize court. Most nations' lists of 'contraband' were similar, with disputes generally arising out of new military uses for items, such as coal following the development of steam propulsion systems. Countries exercising expansive belligerent rights, such as Britain, broadly defined 'contraband'. For example, during the Napoleonic Wars, Britain included 'naval stores', such as sails, pitch, tar, trees for masts, and rope within the definition, much to the consternation of France and other nations. For neutral nations desiring to maintain or expand their trade with belligerents during war, the smaller the number of items declared 'contraband', the better. The US, therefore, advocated a limited list of

[25] Coogan (1981), 18-19; John B. Hattendorf, 'The US Navy and the "Freedom of the Seas", 1775-1917', in *Navies in Northern Waters, 1721-2000*, ed. Rolf Hobson and Tom Kristiansen (London: Frank Cass, 2004), 161-162; Savage (1934), 115-116; Semmel (1986), 14-15.

contraband and even argued that the doctrine should be abolished as early as 1780. The treatment of food and provisions raised special issues because those items often were necessary for the welfare of a nation's general populace. Provisions could be considered 'contraband' if they were intended for enemy forces or a besieged city. The amount and nature of proof to establish that fact was not clear.[26]

Issues also existed regarding whether a 'blockade' had been properly declared and effectively existed and thus could subject a neutral merchant ship to seizure for attempting to 'run' the blockade. To be valid, a blockade had to be announced (although Britain took the position that constructive notice was sufficient) and 'effective'. The critical question was how much naval presence was required and where for a blockade to be considered effective. 'Cruising' or 'paper' blockades, declared by Britain during the Napoleonic Wars in reprisal for French actions, did not result in an 'effective' blockade because sufficient ships were not present. The United States decried such 'paper blockades' and claimed that a legal blockade only was 'where the presence of adequate naval forces virtually guaranteed the interception of ships trying to enter blockaded ports.'[27]

Many nations found it difficult to maintain a sufficient number of ships to attack the trade of the enemy during war. Building and sustaining a navy was expensive. For centuries, therefore, countries authorized privateering as a further means of attacking enemy sea borne trade, thereby turning actions that otherwise would be considered piracy into lawful acts of war. This practice generally favoured nations with small navies but large merchant fleets, which could be readily converted into commerce raiders. Nations with small or greatly outnumbered navies would authorize foreign-owned vessels to act as privateers if necessary. The potential reward – the 'prize' of a well-laden enemy vessel – was a significant financial incentive for privateers. During the American War of Independence and the Napoleonic Wars, privateering was highly profitable and resulted in the capture of

[26] Coogan (1981), 19; Hattendorf, 'Maritime Conflict', 106-108; Hattendorf, 'US Navy, 1775-1917', 163; Ranft, 'Restraints on War at Sea', 44; Savage (1934), 14-17, 28-30, 116-117.

[27] Ranft, 'Restraints on War at Sea', 44. See Coogan (1981), 19; Savage (1934), 118-119.

thousands of British merchant ships.[28] The US enshrined the right of Congress to issue letters of marque and reprisal in its Constitution.[29]

From its foundation, the United States tried to obtain recognition of the principle of the immunity of private property at sea from seizure in time of war. The principle arose from an analogy to efforts to ban plunder on land.[30] As a small, new nation with no navy, the US did not consider it likely that it would become a belligerent, especially in a war involving European powers. Accordingly, the country desired to maximize the ability of its merchant navy not only to continue to trade with belligerents, but also to expand that trade during a war. The immunity of private property at sea, first enunciated on behalf of the United States by Benjamin Franklin in 1780, would immunize *any* privately owned property in *any* vessel from seizure. Whether the property was owned by a neutral or a belligerent or on board a neutral or belligerent merchant ship would not matter. First included in a treaty between the United States and Prussia of 1785, the principle immunized all privately owned property from seizure, even if contraband (the concept of which was abolished in the treaty), and privateers were prohibited from stopping such vessels.[31] The US pressed for international recognition of the principle throughout the century. For example, in 1823, American Secretary of State John Quincy Adams told Britain's minister to the US that seizing enemy property on board a neutral ship was 'a relic of the barbarous warfare of barbarous ages; the cruel, and for the most part, now exploded system of *private* war.'[32] Adams instructed his minister in London to seek Britain's agreement to the immunity of private property at sea during war.[33] After five years of

[28] Hattendorf, 'Maritime Conflict', 103-104; Kennedy, *British Naval Mastery*, 130-133.

[29] United States Constitution, Art. I, §8, ¶11.

[30] For a discussion of the historical development of the principle, see Anon. (Satow), 'The Immunity of Private Property at Sea', (Jan. 1911), 1-23.

[31] Savage (1934), 119-120; 'Treaty of Amity and Commerce between the United States and Prussia', 10 Sept. 1785, Arts. 12, 13, 23, ibid., 160-162.

[32] Adams to Canning, 24 June 1823, ibid., 302-303.

[33] Adams to Rush, 28 Jul. 1823, ibid., 303-313.

unsuccessful efforts to gain the agreement of Britain, Russia, and France, the US temporarily abandoned its efforts.[34]

Several examples illustrate Britain's ability at the beginning of the nineteenth century to effectively 'set' the 'house rules'. During the American War of Independence, Britain aggressively stopped, searched, and interfered with neutral commerce with its rebellious colonies based on the Rule of 1756. Irritated with Britain's actions, in 1780 Denmark, Holland, Russia, and Sweden formed a League of Armed Neutrality and threatened war if Britain did not cease its excessive searches. They proposed general recognition of the rule that enemy property on neutral ships was not subject to seizure. In 1782, England reached an agreement with Russia, the League's leading nation, to curtail its searches of neutral vessels but did not recognize the principle that enemy goods on a neutral vessel were free from seizure. In 1799, a British cruiser attempted to stop and search a Danish vessel travelling in convoy under an armed neutral escort. Britain was dependent on Baltic naval stores for the Royal Navy. Denmark protested this infringement of the rights of neutrals, and Russia and Sweden joined to create a new League of Armed Neutrality in 1800. Britain's response was more definitive this time. The Royal Navy, led by Admiral Lord Nelson, attacked and destroyed the Danish fleet in Copenhagen 1801. Thus chastised, the new League agreed to a watered-down convention, one in which Britain still did not recognize the concept that enemy property on neutral ships was not subject to seizure.[35] During the Napoleonic Wars, Britain reinstituted the Rule of 1756, which made neutrals engaging in trade during war that they could not have undertaken during peacetime subject to seizure. This declaration caused US merchant ships to land cargoes from the French West Indies in the US and then reship them to France. In response, British prize courts adopted the 'continuous voyage doctrine', holding that such intermediate stops, when the goods were intended for an enemy port, were insufficient to break the continuity of the voyage.[36]

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[34] Ibid., 120; Ranft, 'Restraints on War at Sea', 46-47.

[35] Semmel (1986), 14-22.

[36] Hattendorf, 'US Navy, 1775-1917', 166; Lemnitzer (2014), 148; Savage (1934), 117-118.

Nominally, the War of 1812 resulted from Britain's rejection of 'all respect for the neutral rights of the United States' in the on-going war between Britain and France. President James Madison told Congress, 'Under pretended blockades, without the presence of an adequate force and sometimes without the practicability of applying one, our commerce has been plundered in every sea, the great staples of our country have been cut off from their legitimate markets, and a destructive blow aimed at our agricultural and maritime interests.'[37] The conflict settled nothing, and the Treaty of Ghent ending the war essentially was a return to the *status quo ante bellum*. The war did not resolve the legality of Britain's blockades.[38] However, it did solidify 'for Americans a national view towards neutral trade and the freedom of the seas.'[39]

Andrew Lambert has argued regarding this early nineteenth century era:

> While Britain, as the dominant naval power, invariably adopted a different position on maritime legal issues to those of weaker naval rivals and neutrals, the British regime was tempered by practical politics. A clear distinction can be drawn between the legal policy applied in 'total war', when limitation was generally ignored, and a 'limited war' when the views of significant neutrals influenced the execution of policy.[40]

Britain did not completely ignore the rules previously agreed with the other 'tenants in the building' based on the nature of the conflict. Britain applied its prize courts' interpretations of the laws of naval warfare. Moreover, although it did not agree entirely with the rules promoted by the other tenants, Britain often moderated its actions in response to their demands, even during its existential war with Napoleonic France. It also used its position to refuse to discuss maritime rights at the Congress of Vienna in 1814-1815.[41] Britain was still the largest tenant in the building. But global

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[37] Madison to Congress, 1 June 1812, in Savage, *Maritime Commerce*, 277-280.

[38] Andrew D. Lambert, 'The Crimean War Blockade: 1854-56', in *Naval Blockades and Seapower: Strategies and Counter-Strategies, 1805-2005*, ed. Bruce A. Elleman and S.C.M. Paine (Abingdon, UK: Routledge, 2006), 46.

[39] Hattendorf, 'US Navy, 1775-1917', 164.

[40] A. Lambert, 'Great Britain and Maritime Law', 13.

[41] Ibid., 14.

sea trade was changing with the development of new technologies and Britain's maritime commerce was expanding with its empire, thereby creating new interests in favour of greater commerce protection. The Crimean War of 1853-1856, followed by the American Civil War, presented new opportunities and challenges for the development of the laws of naval warfare.

Two Wars, Two Different Directions[42]

In March 1854, Great Britain and France declared war on Russia, joining the Ottoman Empire in the Crimean War. Though now allies, Britain and France had long maintained different positions regarding the treatment of enemy and neutral property on board merchant ships during war. To resolve these conflicts, the two countries compromised, with each nation giving up one of its positions. For the duration of the war, neutral property on enemy ships would be free from seizure, as would enemy property on neutral ships – subject to the exceptions for contraband and attempting to breach a blockade. Britain and France also agreed not to authorize privateers during the war. England agreed to the compromise at least in part due to concerns of Russia authorizing US merchant ships to act as privateers. A less aggressive approach toward neutral commerce made privateering not as attractive. England reserved the right to return to its previous position regarding enemy property on neutral ships in the future.[43] However, a right once surrendered is very difficult to get back.

The US viewed the announcement by Britain and France as an opportunity to turn the laws of naval warfare toward a more pro-neutral orientation. Almost immediately America began a campaign, through bilateral treaties, to gain international acceptance of the principle that free ships make free goods except for

[42] Jan Martin Lemnitzer has cogently and comprehensively analyzed the facts relating to the Declaration of Paris of 1856, America's responses to the Declaration, and the issues for the Declaration arising out of the American Civil War. See generally Lemnitzer (2014), 17-95, 115-153; Jan Martin Lemnitzer, '"That Moral League of Nations against the United States": The Origins of the 1856 Declaration of Paris', *The International History Review* 35, no. 5 (2013): 1068-1088. This section therefore considers only the more salient implications of the Declaration and the American Civil War on the laws of naval warfare and the differing positions of Great Britain and the US.

[43] A. Lambert, 'Great Britain and Maritime Law', 14-15; Lemnitzer (2014), 17-25, 36-43.

contraband.[44] The campaign nearly succeeded, but was deftly parried primarily by Britain, which did not support international acceptance of the principle and also desired international recognition of a ban on privateering.[45] When Prussia suggested such a ban in response to the United States' proposed treaty, President Franklin Pierce rejected the offer, saying 'the commerce of a nation having a comparatively small naval force would be very much at the mercy of its enemy in case of war with a power of decided naval superiority.' However, Pierce then returned to the long-cherished immunity of private property at sea principle. 'Should the leading powers of Europe concur in proposing as a rule of international law to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the US will readily meet them upon that broad ground.'[46] However, that 'broad ground' would remain fallow.

On 30 March 1856, Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey signed the Treaty of Paris ending the Crimean War. At the 'after congress' on 8 April, France offered a major revision to the laws of naval warfare – a surprise to the delegates other than from Britain. The French proposed to make permanent the temporary agreement with Britain regarding the treatment of property on board neutral and enemy merchant ships, to ban privateering, and to define an effective blockade. The British government recognized that having given up long-held belligerent rights two years earlier it would be virtually impossible to restore them. However, the abolition of privateering offered a significant benefit to Britain. Less than two weeks after France made its proposal, on 16 April, the same seven nations that had signed the Treaty of Paris executed the Declaration of Paris.[47]

In four short articles, the signatories of the Declaration not only formalized the temporary rules of naval warfare adopted by Britain and France before the war as accepted international law, they went farther in limiting naval warfare than ever before. In the Declaration, the seven countries agreed:

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[44] See, for example, Marcy to Crampton, 28 Apr. 1854, in Savage (1934), 372-374.

[45] Lemnitzer (2014), 43-56.

[46] Pierce to Congress, 4 Dec. 1854, in Savage (1934), 378-381.

[47] Lemnitzer (2014), 62-70.

1. Privateering is, and remains, abolished;
2. The neutral flag covers enemy's goods, with the exception of contraband of war;
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

. . .

The present Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.[48]

The British government had not consulted with the Admiralty prior to signing the Declaration. Discussion of the proposed terms in the Cabinet occurred over less than two weeks.[49] The treaty seemed to deny Britain significant belligerent rights on which it had relied for its protection in numerous wars. Although liberals and commercial interests supported the Declaration, others condemned the treaty in almost hysterical terms.[50] For example, Lord Derby, in a strident speech in the House of Lords after the agreement was announced, declared it

> to be not only humiliating and derogatory, but absolutely dangerous to the prime interests of England. … The declaration … ha[s] taken the country completely by surprise. … I am of the opinion that the course which has been pursued amounts to an abandonment of the naval

[48] Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, 3rd ed. (Oxford, UK: Oxford University Press, 2000), 49.

By allowing additional countries to accede to the Declaration without being an original signatory, the treaty changed, positively and forever, the means by which international law could be established. This change is the most significant and long-lasting legacy of the Declaration. Lemnitzer (2014), 1-10.

[49] Ibid., 63-68.

[50] Semmel (1986), 57.

> superiority of this country…. My Lords, I look upon this act of the Government as cutting off the right arm, as it were, of the country.[51]

Other peers decried the Declaration in similar terms.[52] Paul Kennedy has described Britain's act as 'an incredible gesture by the world's strongest sea power in favour of the continental states' view that the nationality of any merchant vessel should cover its cargo: at one stroke the weapon of the blockade had been neutered.'[53] John Hattendorf has described the Declaration as 'a major British concession that severely reduced the advantages of its naval supremacy.'[54]

Much analysis has been focused on why Britain agreed to such apparent limitations on its rights as a belligerent.[55] Lemnitzer has argued that Britain 'realised that any return to the old right of search would interfere with the new realities of British-dominated globalized trade, and greatly upset a large number of countries.' Abolishing privateering, the 'main strategic weapon' of the US, was a valuable gain for relinquishing old belligerent rights.[56] Andrew Lambert has stated that 'the reality' of the Declaration 'was far less clear-cut' than asserted by contemporary commentators and historians.[57]

Regardless why Britain agreed to the Declaration of Paris, the treaty offered any semi-skilled lawyer (and therefore certainly Britain) numerous loopholes and opportunities for argument. Nations eventually evaded the ban on privateering by

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[51] *Hansard* 3rd ser., HL Deb., vol. 142, cols. 521, 523, 525-526, 535 (22 May 1856). Derby's speech was made in the political context of the Conservative Party's desire to defeat the government. Lemnitzer (2014), 71; Semmel (1986), 57-58.

[52] Ibid.

[53] Kennedy, *Rise and Fall of British Naval Mastery*, 175.

[54] Hattendorf, 'Maritime Conflict', 109.

[55] For a summary of the various analyses, see Lemnitzer (2014), 11-13.

[56] Ibid., 13; Lemnitzer, 'Moral League of Nations', 1069, 1081-1083.

[57] A. Lambert, 'Crimean War Blockade', 58. See also A. Lambert, 'Great Britain and Maritime Law', 15 (stating in an earlier analysis, 'The Declaration, like any other treaty between nations, was ineffective in wartime, and … could be ignored or revoked once another belligerent broke its terms.'); Offer (1989), 271 (suggesting the Declaration was not violated for over fifty years because nations 'had no clear temptation to defy it'.).

arming merchant ships as auxiliaries.[58] 'Contraband' was not defined, which meant that by expanding the list of goods considered contraband, a belligerent could reduce the scope of protection afforded by clauses 2 and 3.[59] The evidence required to determine the nationality of a 'neutral' ship or ownership of property was not established. The criteria for an 'effective' blockade – 'maintained by a force sufficient really to prevent access to the coast of the enemy' – was subject to interpretation.[60] In addition, Britain maintained its concept of continuous voyage as a further weapon against blockade evaders. Finally, the Declaration only applied to conflicts with other nations that agreed to be bound by its terms. Its application, therefore, was not universal. However, irrespective of the potential porousness of the Declaration, Britain had agreed to new 'house rules' that limited belligerent rights.

Virtually alone among the major nations, the US did not agree to be bound by the Declaration, because it could not and would not abolish privateering.[61] Regardless of constitutional restrictions, the US again attempted to leverage the movement toward greater neutral rights by urging adoption of the total immunity of private property at sea as the *quid pro quo* for acceptance of the abolition of privateering.[62] Surprisingly, Prime Minister Lord Palmerston told the Liverpool Chamber of Commerce on 7 November 1856 that he hoped 'those principles of war which are applied to hostilities by land may be extended, without exception, to hostilities by sea; so that private property shall no longer be the object of aggression by either side.'[63] In June 1859, American Secretary of State Lewis Cass used the beginning of the Second Italian War of Independence to propose a comprehensive reform of the laws of naval warfare. His proposal addressed three topics. First, Cass considered the principle of immunity of enemy property on board a neutral ship to be established international law by virtue of the 1856 Declaration. However, he argued

[58] A. Lambert, 'Crimean War Blockade', 58.

[59] See A. Lambert, 'Great Britain and Maritime Law', 15-17; Lemnitzer (2014), 13.

[60] See A. Lambert, 'Crimean War Blockade', 58; Lemnitzer (2014), 63, 143.

[61] Hattendorf, 'Maritime Conflict', 109. The US could not enter into a treaty that forbid the exercise of a right explicitly granted by the Constitution without amending the Constitution.

[62] Savage (1934), 76-81.

[63] Palmerston, Address to the Liverpool Chamber of Commerce, 7 Nov. 1856, in CAB 17/85, f. 153. Palmerston subsequently recanted his view in 1862. See ibid.

that neutral nations did not need to accede to the treaty in order to gain the protection of their commerce granted by the Declaration. Cass next addressed the issue of blockades. He sought to limit 'effective' blockades to those established outside ports under siege. Finally, he considered the 'lamentably vague' law of contraband. Cass presciently recognized that as technology advanced, new articles might fall within its 'shifting' scope. He used coal as an example of a product which 'is an article, not exclusively nor even principally used in war, but which enters into general consumption in the arts of peace, to which it is now vitally necessary.' He therefore proposed that contraband should be 'rigidly confined within the narrowest limits compatible with an honest belligerent policy; … those limits ought to be made to include only arms and munitions of war.'[64] In return for these further limitations and the immunity of private property at sea, the US would agree to abolish privateering.[65] While the US did not directly achieve Cass's goals, it did so indirectly. As a result of a commercial treaty with France, Britain effectively agreed not to treat coal as contraband. When the Second Opium War began in 1860, England dropped its position that the neutral rights granted by the 1856 Declaration only applied to signatories.[66]

Thus, Britain had successfully blocked America's efforts to achieve recognition of the immunity principle, narrow the scope of effective blockades, and restrict contraband. But Britain's ability to set the 'house rules' on naval warfare had eroded in the face of desires of the other tenants in the building.

The beginning of the American Civil War found the United States and Great Britain exchanging their traditional positions toward limitations on naval warfare. The US was a belligerent against the secessionist Southern states and therefore promoted more expansive belligerent rights. Britain, as a neutral, now supported neutral rights, although without great enthusiasm in many respects. The main issues between the two nations were what constituted an effective blockade and the related doctrine of continuous voyage. But first, the US offered in April 1861 to adhere to the Declaration of Paris without requiring acceptance of the immunity of all private

[64] Cass to Mason, 27 June 1859, in Savage (1934), 402-412.

[65] Lemnitzer (2014), 98.

[66] Ibid., 112-114.

property at sea during war.[67] The reason for this apparent *volte-face* was the immediate impact of Confederate privateers preying on Northern commerce. The proposal foundered when Great Britain and France insisted that accession of the United States to the Declaration at that time would not apply to the on-going civil war.[68]

The US declared a blockade of the entire coast of the Confederacy in April 1861.[69] Since 1784, the US had taken the view that 'to be valid, a blockade must present a direct hazard to shipping trying to enter a port.'[70] Initially, therefore, the declaration likely was an ineffective 'paper blockade' – certainly under France's view of international law. However, the US increased the number of warships cruising outside the Southern ports and up and down the coasts, and created a viable risk of interception for blockade-runners. The position of the United States on what constituted an 'effective' blockade conformed more to that of Britain, which 'allow[ed] for cruising blockades as long as they created real danger for any blockade runners and thus frightened off honest merchants who were too timid for smuggling.' Britain did not forcefully object to the status of the blockade. The United States' position as a belligerent regarding what constituted an effective blockade thus supported Britain's interpretation of article 4 of the 1856 Declaration.[71]

The second area of conflict related to America's expansion of the doctrine of continuous voyage and the seizure of neutral ships allegedly carrying contraband. One of the first seizures was that of two Confederate diplomats travelling on the British mail steamer *Trent* to England in November 1861. The US initially took the position that enemy persons could be seized as contraband. Britain strongly protested the action and the two countries verged on war. However, the US retreated, saying the entire vessel should have been seized and taken to port as a prize. Moreover,

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[67] Seward to Adams, 24 Apr. 1861, in Savage (1934), 416-419.

[68] Seward to Adams, 7 Sept. 1861, ibid., 432-435; Seward to Dayton, 10 Sept. 1861, ibid., 435-439.

[69] See Lincoln, 'Proclamation Regarding the Blockade of Ports', 27 Apr. 1861, ibid., 420.

[70] Hattendorf, 'US Navy, 1775-1917', 167.

[71] Lemnitzer (2014), 139-143.

Britain pointed out that contraband could only be seized if destined for a belligerent port, not a neutral one.[72]

A number of British merchant ships, seeking to avoid the North's blockade of the South, claimed to be bound for a neutral port despite carrying contraband. A neutral destination arguably absolved them from seizure. In a series of decisions, the US Supreme Court expanded the concept of continuous voyage. The *Bermuda*, a British ship seized by the US Navy bound from England ostensibly to Bermuda, carried munitions including cannon, thousands of shells, gunpowder, and documents indicating the ultimate destination was the port of Charleston, South Carolina. The prize court held the continuous voyage doctrine applied to blankets and boots if it was established they were intended for the enemy forces. The US Supreme Court affirmed the seizure of both the cargo and the ship, and held that a neutral ship could not carry contraband 'ostensibly for a neutral port, but destined in reality for a belligerent port, either by the same ship or by another, without becoming liable, from the commencement to the end of the voyage, to seizure'.[73] Subsequent decisions further expanded the doctrine. In *The Springbok*, the US Supreme Court affirmed the seizure of the entire cargo (even though only a small part was contraband), but not the ship, because the cargo was shipped with the intent to violate the blockade. The Court ruled, 'liability to condemnation, if captured during any part of that voyage, attached to the cargo from the time of sailing.'[74] The Court further expanded the doctrine by making clear that further transport of contraband, whether by the same or another ship, or by overland transport, did not prevent its application. In *The Peterhoff*, the Court affirmed the seizure of contraband based on evidence those items were to be transhipped to the Confederacy by land after being off-loaded in a neutral port, not by a further sea voyage.[75]

Britain did not significantly protest the seizures of these vessels or the ultimate decisions. The fact the ship owners and shippers in these cases were notorious blockade-runners reduced sympathy for their plights and the ability of Britain to

[72] Ibid., 144; Hattendorf, 'US Navy, 1775-1917', 167.

[73] *The Bermuda*, 70 U.S. (3 Wall.) 514 (1865), in Savage (1934), 454-460.

[74] *The Springbok*, 72 U.S. (5 Wall.) 1 (1866), ibid., 460-466.

[75] *The Peterhoff*, 72 U.S. (5 Wall.) 28 (1866), ibid., 466-476.

challenge the prize court decisions.[76] For example, the government initially told the *Springbok*'s owner it would do nothing other than observe the prize court proceedings.[77] After the prize court announced its bare judgment, the government took the position that the seizure was improper based on an analysis by the Crown's Law Officers. But it deferred any protest until the court's opinion was released.[78] Once the government reviewed the detailed opinion, it told the ship's owner it would not interfere in the proceedings.[79] Similarly, after reviewing the evidence regarding seizure of the *Peterhoff*, as well as another British ship, the *Dolphin*, Britain again decided it would not officially protest.[80] Based on its review of the evidence before the prize courts in both cases, 'Her Majesty's Government, without adopting all the reasons assigned in these Judgments (in some of them, indeed, they do not concur), are not prepared to say that the decisions themselves, under all the circumstances of the cases, are not in harmony with the principles of the Judgments in the English Prize Courts.'[81]

The US, as a belligerent, thus had expanded the doctrine of continuous voyage, a principle originally created by Britain during the Seven Years' War. It also had adopted Britain's more lenient position on what constituted an effective blockade. Some of the belligerent rights Britain arguably had lost following the Crimean War were retrieved during the American Civil War. Moreover, the refusal of European nations to allow Confederate privateers access to their ports effectively ended privateering, without the agreement of the US.[82] Two different mid-century wars had taken the laws of naval warfare in different directions.

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[76] Lemnitzer (2014), 145-149.

[77] Hammond to Begbie, 14 Mar. 1863, in Foreign Office, *Correspondence Respecting the Seizure of the British Vessels 'Springbok' and 'Peterhoff' by United States Cruisers in 1863* (Miscellaneous No. 1 (1900)) (London: HMSO, 1900), 3.

[78] Russell to Lyons, 20 Dec. 1863, ibid., 22-23.

[79] Russell to Lyons, 20 Feb. 1864, ibid., 39-40.

[80] Russell to Lyons, 31 Oct. 1863, ibid., 60.

[81] Russell to Lyons, 22 Apr. 1864, ibid., 68.

[82] Lemnitzer (2014), 129-134.

New Challenges and Challengers

After losing and then regaining some belligerent rights during the middle decades of the nineteenth century, Britain focused on not allowing any further restrictions on naval warfare for the remainder of the century.[83] It also responded to the rise of new challengers to its dominant position as a sea power. In contrast, the nation agreed to international limitations concerning land warfare. It readily acceded to the Geneva Convention of 1864 and the 1868 St. Petersburg Declaration.[84]

After the end of the American Civil War, the US again tried to gain international acceptance of the immunity of private property at sea. The Franco-Prussian War had important implications for the development of the laws of naval warfare, particularly regarding contraband, blockade, and auxiliary vessels.[85] When Prussia announced in 1870 that private property at sea would be exempt from seizure without regard to reciprocity from France, the US told its minister to the North German Confederation to obtain recognition of the principle.[86] However, the only success achieved was in a treaty between the United States and Italy.[87] In Britain, supporters of the principle kept the issue alive in British politics and advocated for its adoption without success.[88]

Britain still exercised its position to preclude discussion of limitations on maritime warfare. In 1874, Russia proposed that an international conference take place in Brussels to discuss an 'International Convention on the Laws and Customs of

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[83] See A. Lambert, 'Crimean War Blockade', 58. Lambert overstates Britain's actions somewhat with the unqualified assertion, 'Between 1856 and 1900 the British Government resisted all attempts to widen, or register new, legal powers that might limit British action in wartime.'

[84] See Foreign Office, *Accession of the British Government to the Convention Signed at Geneva, August 22, 1864* (London: HMSO, 1865); Foreign Office, *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight* (London: HMSO, 1869).

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[86] Fish to Gerolt, 22 July 1870, in Savage (1934), 480-482; Fish to Bancroft, 28 Oct. 1870, ibid., 482.

[87] 'Treaty of Commerce and Navigation between the United States and Italy', 26 Feb. 1871, Articles XII to XVI, ibid., 482-484.

[88] Semmel (1986), 76-82.

War.'[89] The British government's response made clear it was 'firmly determined not to enter into any discussion of the rules of international law by which the relations of belligerents are guided, or to undertake any new obligations or engagements of any kind in regard to general principles.' Having heard that at least one country intended to send a naval delegate and naval matters might be considered, Britain wanted to make its position quite clear.[90] The secretary of state for foreign affairs, Lord Derby, asked Britain's representatives in all countries invited to confirm that the conference 'shall not entertain in any shape, directly or indirectly, anything relating to maritime operations or naval warfare.'[91] After meticulously obtaining precise responses from each invited nation, Britain accepted the invitation, based on 'the assurances thus given by the Russian and other Governments that the Conference will not entertain any questions relating to maritime operations or naval warfare; and … there is no intention of enlarging the scope of the Conference so as to include the discussion of general principles of International Law.'[92] Lord Derby instructed Britain's delegate 'to guard carefully against being led, in the course of deliberations on other matters, into any discussions which may, however remotely, affect the subject of maritime warfare … and if any papers are attempted to be presented to the Conference, or any statements made which refer to it, you will protest against such papers or statements being received'.[93] The result of the conference was merely a record of the proceedings, at which Britain's delegate made clear he was not taking part in any discussions on controverted questions of international law.[94]

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[89] Inclosure to Gortchakow to Brunnow, 17 Apr. 1874, in Foreign Office, *Correspondence Respecting the Proposed Conference at Brussels on the Rules of Military Warfare* (Miscellaneous No. 1 (1874)) (London: HMSO, 1874), 5-6, 12-17. For a discussion of the 1874 Conference, see Holland, *Studies in International Law*, 59-78.

[90] Derby to Loftus, 4 July 1874, ibid., 27-28.

[91] Derby to Her Majesty's Representatives, 4 July 1874, ibid., 28.

[92] Derby to Her Majesty's Representatives, 27 July 1874, in Foreign Office, *Correspondence Respecting the Proposed Conference at Brussels on the Rules of Military Warfare, Part II* (Miscellaneous No. 2 (1874)) (London: HMSO, 1874), 19.

[93] Derby to Horsford, 25 July 1874, in Foreign Office, *Correspondence Respecting the Brussels Conference on the Rules of Military Warfare* (Miscellaneous No. 1 (1875)) (London: HMSO, 1875), 1-2.

[94] Derby to Horsford, 29 Aug. 1874, ibid., 133.

Britain also faced threats to its dominance on the seas from other nations. In 1885, France declared food – rice – contraband in its war with China. Declaring food contraband was a new precedent that caused neutrals, including Britain, to protest. Although not technically a violation of the Declaration of Paris, the action suggested that previously sacrosanct lines could be crossed in war.[95] In 1886, the French government appointed Admiral Hyacinthe-Laurent-Théophile Aube as minister of marine. Aube was a proponent of the *jeune école* theory of naval strategy, often called 'the strategy of the weak'. Under that school of thought, Britain was the primary enemy and the French navy was to engage in ruthless commerce destruction and bombardment of coastal defences. Contests between fleets of battleships were a thing of the past. Aggressive and relentless *guerre de course* would result in victory over England. Moreover, the self-propelled torpedo – developed by Englishman Robert Whitehead but ignored at the time by the Royal Navy – made the tactics of the *jeune école* appear not just feasible, but likely to succeed. Torpedoes threatened the viability of traditional blockades and would allow forces from several stations to make concentrated, coordinated, and rapid attacks on the enemy.[96]

The *jeune école* had a more sinister side regarding international law and the laws of naval warfare. 'Commerce warfare, as it was advocated by the *jeune école*, raised difficult strategic, moral, legal and practical questions that were tightly interlocked.' In the view of its proponents, the 1856 Declaration grossly favoured Britain and left France in an inferior position (contrary to the general view in England). In any war, the Declaration therefore would have to be ignored. The planned use of torpedoes, merciless commerce raiding, and the ruthless bombardment of undefended harbours, cities, and industrial centres inevitably would violate

[95] Lemnitzer (2014), 185-186.

[96] Arne Røksund, *The Jeune École*: *The Strategy of the Weak* (Leiden, NL: Brill, 2007), 1-52; Theodore Ropp, *The Development of a Modern Navy: French Naval Policy, 1871-1904*, ed. Stephen S. Roberts (Annapolis, MD: Naval Institute Press, 1987), 155-157, 159-167; Arne Røksund, 'The *Jeune École*: The Strategy of the Weak', in *Navies in Northern Waters, 1721-2000*, ed. Rolf Hobson and Tom Kristiansen (Abindon, UK: Frank Cass, 2004), 117-130.

international law. Indeed, the *jeune école* 'disputed the very idea that international law was valid in war.'[97]

Aube's short and ineffective tenure as navy minister and the *jeune école* rendered the French Navy discordant and divided for years. However, Britain took the threat arising from the expansion of the French fleet seriously.[98] Coupled with disclosures of weaknesses and deficiencies in the Royal Navy in the late 1880s, Britain announced in March 1889 that it would follow a 'two-power standard', pursuant to which the Royal Navy would be maintained as large as the next two naval powers combined.[99] The Naval Defence Act of 1889 started the naval arms race between Britain and France – and after the announcement of the Franco-Russian alliance in 1891 with Russia as well – that would continue until the early years of the twentieth century.[100]

The US Navy also emerged as a potential, though still distant, competitor for Britain. In 1890, the US Navy was the twelfth largest in the world. Its focus since founding had been coastal defence and protection of commerce during war.[101] The US previously had been content to argue for limitations on naval warfare to permit its maintenance of a small fleet. However, the 1890 Naval Act provided for a significantly modernized and expanded naval force. While the modern steel battleships authorized were limited to a 5,000 mile cruising range, for the first time the US Navy would not rely essentially on cruisers or frigates for its operations. It would have the potential for more extensive actions in time of war than in the past.[102] In addition, Alfred Thayer Mahan burst upon the world with his theory of naval strategy and sea power as expressed in *The Influence of Sea Power upon History,*

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[97] Ibid., 129-136.

[98] Ropp, *Development of a Modern Navy*, 178, 204-205.

[99] Kennedy, *British Naval Mastery*, 178-179. For a retrospective review of the two-power standard, see 'Two-Power Standard', May 1909, MS Asquith 21, 251-260, Papers of Herbert Henry Asquith, Bodleian Library, Oxford, UK.

[100] Ropp, *Development of a Modern Navy*, 205-206. See also Kennedy, *British Naval Mastery*, 179.

[101] George W. Baer, *One Hundred Years of Sea Power: The U.S. Navy, 1890-1990* (Stanford, CA: Stanford University Press, 1993), 11.

[102] Kenneth J. Hagan, *This People's Navy: The Making of American Sea Power* (New York: Free Press, 1991), 194-197.

1660-1783. Mahan studied the British Navy in the age of sail, and he saw in that navy and its operations a focus on maintaining control of the sea during war, climactic sea battles, and the road to a nation's growth and wealth. Contrary to the *jeune école*, commerce raiding was at best a secondary means to force the enemy fleet to engage in the climactic battle for control of the sea.[103] For Mahan, the US Navy needed to emulate the Royal Navy of the past in order to safeguard and secure the country's future prosperity. The United States needed to become a sea power.

As the nineteenth century drew to a close, Britain still was the largest tenant in the international 'condominium'. The rest of the world could not discuss the laws of naval warfare without its agreement and participation. The Netherlands approached Britain in 1893 and suggested an international conference to discuss extension of the Declaration of Paris 'by agreeing to the principle that private property of subjects or citizens of a belligerent on the high seas should be exempt from seizure.'[104] Prime Minister Lord Rosebery's response was a curt instruction to tell The Netherlands that 'Her Majesty's Government regret that they do not see their way to accede to such a proposal.'[105] At the diamond jubilee of Queen Victoria in 1897, Great Britain assembled the largest and most powerful naval force the world had ever seen to celebrate the occasion.[106] The Declaration of Paris also retained its vitality more than forty years after its adoption. After the US declared war on Spain in April 1898, President McKinley announced the country would not authorize privateering and would adhere to the other provisions of the 1856 Declaration.[107]

Conclusion

The nineteenth century began with some generally accepted laws of naval warfare and a number of areas of disagreement. Great Britain, as the predominant naval power, essentially managed and controlled the 'house rules'. For most of the

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[103] Mahan, *Influence of Sea Power*, 1-24, 81-89, 539-540.

[104] Villiers to Rosebery, 28 Jan. 1893, CAB 17/85, f.230.

[105] Rosebery, Minute on Villiers to Rosebery, ibid. See Currie to Bylandt, 11 Feb. 1893, ibid., ff. 230-231.

[106] Kennedy, *British Naval Mastery*, 205.

[107] 'Proclamation Regarding Spanish and Neutral Commerce', 26 Apr. 1898, in Savage (1934), 486-487.

century, it refused to participate in discussions and blocked efforts to limit naval warfare. The one exception – the Declaration of Paris in 1856 – resulted in limitations on belligerent rights to the dismay of many in Britain. For nearly all of the century, the US endeavoured to expand neutral rights, especially international adoption of the immunity of all private property at sea during war. Britain successfully blocked these efforts, and as a neutral in the American Civil War, gained some expansion of belligerent rights. In the last half of the century, Britain faced new challenges and challengers to its dominant maritime position. With the expansion of other navies and increased naval expenditures, Britain was no longer the predominant tenant in the international 'house'. The stage was set for another attempt at international consideration of the laws of naval warfare, one that this time would succeed.

Chapter 2

Opening Pandora's Box

On 24 August 1898,[1] Tsar Nicholas II changed naval strategic thinking and planning forever – although that was not his intention. On that date, he invited the leading nations of the world to an international peace conference. This invitation ushered in an unprecedented period of focus on the laws of war and their adaptation and adoption to naval warfare. This chapter places the Tsar's invitation in context from a naval standpoint. It situates on-going the naval arms race, especially between Great Britain and Russia, in the context of the conference's origins and returns the conference to its proper place in the pre-First World War naval historiography. The initial reactions and responses of Britain and the United States to the Tsar's invitation are compared. This chapter shows how civilian and naval leaders in Britain and the US were confronted with the potential implications of the proposed international conference for naval warfare, albeit from very different perspectives and with very different reactions.

The Tsar's Invitation

The ambassadors and ministers to the court of Tsar Nicholas II went to the Foreign Ministry on 24 August 1898, expecting their regular weekly meeting with the foreign minister. Instead, they received a 'mighty surprise'.[2] Count Mikhail Muraviev, the Russian foreign minister, informed them, 'The maintenance of general peace and a possible reduction of the excessive armaments which weigh upon all nations present themselves, in the existing condition of the whole world, as the ideal towards which the endeavours of all Governments should be directed.' Nicholas II wanted to convene an international conference to seek 'the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and above all of limiting the progressive development of existing armaments.' Indeed, most of the

[1] All dates used in this thesis, insofar as they relate to events in Russia, are 'new style' Gregorian calendar dates.

[2] Geoffrey Best, 'Peace Conferences and the Century of Total War: The 1899 Hague Conference and What Came After', *International Affairs* 75, no. 3 (July 1999): 621.

official message handed to the foreign representatives emphasized the economic burdens being imposed by increasing armaments.[3]

Nicholas II believed his backward nation's economy was being unduly burdened by the cost of the on-going arms race in the late nineteenth century.[4] The genesis of the proposal and who promoted the idea within Russia has been the subject of various speculations and investigations. Sir Charles Scott, Britain's recently appointed ambassador to St. Petersburg, advised Prime Minister Lord Salisbury that he had been told the 'eloquent appeal' had been 'drawn up at the dictation of the Emperor.'[5] Rumours soon surfaced among diplomats – although generally dismissed at the time – that the invitation was inspired by the work of Ivan S. Bloch, a Polish economist and banker received by Nicholas II, and who argued that war was impossible due to advances in technology and economic interdependence of nations.[6]

However, the proposal originated from more practical concerns regarding Austria-Hungary's adoption of new rapid-firing artillery and the expense that Russia would incur making comparable changes to its army. War Minister Aleksei Kuropatkin initially suggested Russia should negotiate with Austria-Hungary to agree that neither country would proceed with the change to new artillery. Count Sergei Witte, the Minister of Finance, took sole credit in his self-serving memoirs for translating Kuropatkin's proposal into a general appeal to the Great Powers for disarmament and limitation of military expenditures.[7] But the development of the

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[3] James Brown Scott, ed., *Instructions to the American Delegates to the Hague Peace Conferences and their Official Reports* (New York: Oxford University Press, 1916), 1-2.

[4] Detlev F. Vagts, 'The Hague Conventions and Arms Control', *The American Journal of International Law* 94, no. 1 (Jan. 2000): 31-33.

[5] Scott to Salisbury, 25 Aug. 1898, in Foreign Office, *Correspondence Respecting the Proposal of His Majesty the Emperor of Russia* (Russia No. 1) (London: HMSO, 1899), 2. See also Scott to Balfour, 25 Aug. 1898, A/129, 'Russia From & To 1895-1900', ff. 117-122, Salisbury Papers.

[6] Hagerman to White, 15 Sept. 1898, reel 75, White Papers. Ivan S. Bloch authored a six-volume tome presenting his argument on the impossibility of war. The last volume was translated into English. See I.S. Bloch, *The Future of War in Its Technical, Economic, and Political Relations: Is War Now Impossible?* trans. R.C. Long (New York: Doubleday & McClure, 1899).

[7] Sergei Witte, *The Memoirs of Count Witte*, ed. and trans. Abraham Yarmolinsky (New York: Doubleday, 1921), 96-97.

proposal and its alteration into a more general plea for reduction of armaments had multiple parents, including the Tsar.[8] The most recent examiner concluded the Tsar's invitation was the result of both pragmatism (the need to reduce or eliminate the additional military expenditures that would result from matching Austria-Hungary's adoption of new artillery) and idealism (a genuine desire to reduce military spending and the significant drain on finances that could otherwise be used elsewhere).[9] The first analysis of the genesis of the Tsar's invitation flatly declared 'that the Russian government most certainly did not intend to include the limitations of naval armaments in its plan.'[10]

The on-going naval arms race, especially between Great Britain and Russia, as well as to a lesser extent the deteriorating relations between those two countries, has generally been lost in the analysis or ignored in considering the factors that resulted in the Tsar's invitation. Arthur Marder discusses the on-going naval arms race between Britain, France, and Russia in his brief discussion of the 1899 conference, but does not consider it in relation to the Tsar's invitation.[11] Jon Tetsuro Sumida describes the substantial British naval expenditures at the end of the nineteenth century and generally states they 'were countered by French and Russian programs'.[12] Nicholas Lambert provides a fuller exposition of Britain's spending on the Royal Navy during the time period in response to French and Russian naval programs.[13] However, neither Sumida nor Lambert provides any linkage to the Tsar's invitation for a peace conference, because neither mentions the 1899 Conference in their analysis. Other recent scholars, while arguing that Germany became the focus of the Royal Navy's

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[8] Thomas K. Ford, 'The Genesis of the First Hague Peace Conference', *Political Science Quarterly* 51, no. 3 (Sept. 1936): 362-370; Dan L. Morrill, 'Nicholas II and the Call for the First Hague Conference', *The Journal of Modern History* 46, no. 2 (June 1974): 296-313.

[9] Morrill, 'Call for the First Hague Conference', 296-298, 313.

[10] Ford, 'Genesis of the First Hague Conference', 376. Ford based his assertion, at least in part, on his conclusion that Witte was 'a big navy man' who was willing to spend considerable sums on the navy but not the army. Ibid., 366.

[11] Marder (1940), 343-346.

[12] Sumida (1989), 20-21.

[13] Nicholas A. Lambert, *Sir John Fisher's Naval Revolution* (Columbia, SC: University of South Carolina Press, 1999), 22-32.

concerns much earlier than previously contended, also do not consider the naval arms race in the context of the Tsar's proposal for a peace conference.[14]

Diplomatic relations between Britain and Russia were worsening in 1897-1898. The two countries had been in conflict in the Far East, particularly China, for some time.[15] By August 1898, Britain was upset with Russia's procurement of a railroad concession from the Chinese government and its acquisition of Port Arthur. Rumours spread that war was possible and that the United States and Germany were interested in forming an anti-Russia coalition with Great Britain.[16] Only a few months later, Britain confronted France at Fashoda in East Africa. England gained a diplomatic victory due to the role of the Royal Navy and its overwhelming strength.[17]

More importantly, the last years of the nineteenth century marked a substantial increase in naval expenditures in a number of countries, especially Britain.[18] In March 1897, First Lord of the Admiralty George J. Goschen told the House of Commons that the country was 'moving at a very great rate in the direction of increasing, the Navy, and within a comparatively short space of years'.[19] Later that year, Imperial Germany announced the Navy Law of 1898, which provided for a massive increase in naval spending.[20] Goschen justified his request for an increase in the number of battleships and cruisers to be constructed in 1898-1899 based on

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[14] See, for example, Matthew S. Seligmann, 'Britain's Great Security Mirage: The Royal Navy and the Franco-Russian Naval Threat, 1896-1906', *The Journal of Strategic Studies* 35, no. 6 (Dec. 2012): 861-886; Keith Wilson, 'Directions of Travel: The Earl of Selborne, the Cabinet, and the Threat from Germany, 1900-1904', *The International History Review* 30, no. 2 (June 2008): 259-272.

[15] For a discussion of British-Russian diplomatic relations in the Far East during this period, see T.G. Otte, *The China Question: Great Power Rivalry and British Isolation, 1894-1905* (Oxford, UK: Oxford University Press, 2007), 74-176.

[16] Morrill, 'Call for the First Hague Conference', 309-312.

[17] Paul M. Kennedy, *The Rise and Fall of British Naval Mastery* (Amherst, NY: Humanity Books, 1998), 206.

[18] Ibid., 208-209.

[19] *Hansard* 4th ser., HC Deb., vol. 47, col. 82 (5 Mar. 1897).

[20] Holger H. Herwig, *'Luxury' Fleet: The Imperial German Navy, 1888-1918* (Amherst, NY: Humanity Books, 1987 [1980]), 31-32, 35-36; Patrick J. Kelly, *Tirpitz and the Imperial German Navy* (Bloomington, IN: Indiana University Press, 2011), 2, 134-155.

Russian and French shipbuilding. He predicted, however, 'a diminution in the amount required for shipbuilding in 1899-1900.'[21] Goschen asked the House of Commons to approve 'a colossal sum for the Navy estimates' of more than £25.5 million, the largest in British history. In making this request, he advised that 'the Japanese fleet is a new factor in strategic considerations, and there are naval developments by Germany and other nations.'[22] Indeed, the US Navy had been expanding since 1890 and in 1898 the total naval appropriation in the US was $57 million.[23]

But on the same day Nicholas II issued a *ukase* (a proclamation of the Tsar with the force of law) appropriating 90 million rubles without recourse to a loan for naval construction over the following seven years.[24] While Goschen had some 'intimation' of Russia's plan in late February, he told the Cabinet in June that the Admiralty would have to take Russia's new 'gigantic programme' of ship building to account in the budget proposal for 1898-1899. The Cabinet, therefore, had to decide, 'whether or not the extraordinary Russian programme must, or need not, be met by additional efforts on our part.'[25] Goschen undoubtedly thought the answer must be 'yes'. The Cabinet agreed that the government 'must meet the Russian programme whatever it might be', but left determination of what that would involve to Goschen and Chancellor of the Exchequer Sir Michael Hicks Beach.[26] Hicks Beach was sceptical of the bases for Goschen's demands, but in a series of letters just days before his presentation to Parliament, Goschen convinced Hicks Beach of the accuracy of his facts regarding Russia's program and the need for additional naval construction,

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[21] Goschen, 'Navy Estimates and Ship-building Programme, 1898-99', 17 Feb. 1898, CAB 37/46/20, 3-6.

[22] *Hansard* 4th ser., HC Deb., vol. 54, cols. 1252, 1259 (10 Mar. 1898).

[23] Kenneth J. Hagan, *This People's Navy: The Making of American Sea Power* (New York: Free Press, 1991), 196-197, 213-214. See also 'The British Navy Estimates', *The Times* (London), 16 Mar. 1898, p. 5, col. 2.

[24] *The Times* (London), 11 Mar. 1898, p. 5, col. 3; Ford, 'Genesis of the First Hague Conference', 363.

[25] Goschen, 'Russian Naval Construction', 9 June 1898, CAB 37/47/39, 1, 4.

[26] Goschen to Hick Beach, 21 July 1898, D2455/X4/1/1/32, Hicks Beach Papers.

especially cruisers.[27] Goschen presciently warned Hicks Beach, 'so that there may be no misunderstanding', that in view of the cruiser program of Russia and France, 'we must resolutely face the necessity of our having to add considerably to ours in next years ordinary programme. … What I am proposing now is not in alleviation of next years' estimates.'[28]

Accordingly, just over four months after asking the House of Commons for a 'colossal sum', and barely a month before issuance of the Tsar's invitation to a peace conference, Goschen asked the House for an additional £15 million to be spent over the next four years for four more battleships, four more cruisers, and twelve torpedo boat destroyers. On this occasion he explicitly named Russia and its naval building program as the reason for the supplemental request.[29] Thus, the years and months leading up to the Tsar's invitation were characterized by massive naval armaments expenditures in Britain and other maritime nations, with much of Britain's focus being on Russia.

It was in this context that the Tsar invited the world's powers to a conference to discuss arms reductions and peaceful means for the resolution of disputes. The day after receiving the Tsar's invitation, Ambassador Scott told Balfour he had 'no doubt whatsoever of the sincerity of the Emperor's pacific sentiments and earnest desire to arrive at a friendly understanding on all questions with England.'[30] Approximately two weeks later, Scott wrote Lord Salisbury that Witte's financial policy was being 'seriously jeopardized by large demands for artillery *& naval purposes*.'[31] Any suggestion that the global naval situation played no role in the Tsar's invitation to a peace conference is undercut not only by the vast increases in naval armaments in Britain, Russia, and other countries in the years and months immediately preceding August 1898, but also by the number of topics relating to naval matters that eventually were agreed for discussion at the 1899 Conference. Appreciating the naval

[27] Goschen to Hicks Beach, 20 July 1898, ibid.; Goschen to Hicks Beach (two letters), 21 July 1898, ibid.

[28] Goschen to Hicks Beach, 20 July 1898, ibid. (emphasis in original).

[29] *Hansard* 4th ser., HC Deb., vol. 62, cols. 854-863 (22 July 1898).

[30] Scott to Balfour, 25 Aug. 1898, A/129, ff. 117-122, Salisbury Papers.

[31] Scott to Salisbury, 8 Sept. 1898, Add MSS 52297, ff. 75-81, Scott Papers (emphasis added).

and diplomatic context surrounding the Tsar's proposal is important to understanding subsequent events.

Initial Reactions

Nicholas II's invitation generally was met with scepticism among the various heads of state and their senior ministers. Pacifists and peace-seekers were excited by the prospect of such a conference. However, the 'chancelleries of Europe handled it like a parcel that might contain a bomb.'[32] Nevertheless, no nation wanted to be the one to say 'no'. Great Britain and the United States took vastly different approaches to the Tsar's invitation. Indeed, the reactions and responses indicate the different levels of concern in each country regarding naval matters and the proposed conference.

The Tsar's invitation came less than two weeks after the US had concluded an armistice with Spain ending formal hostilities in what the then American ambassador to Great Britain (and soon-to-be US secretary of state) John Hay famously described as 'a splendid little war'.[33] The US ambassador to Russia recommended the Tsar's announcement 'to the absorbing interest of the President and people of the United States' promptly after receipt.[34] On 3 September, Count Muraviev provided a brief synopsis of the conference program, concluding that while present armaments would not be considered, ways to avoid further increases in armaments would be discussed.[35] Only twelve days after the Tsar's invitation, President William McKinley accepted, saying rather inconsistently that while the 'war with Spain renders it impracticable for us to consider the present reduction of our armaments, which even now are doubtless far below the measure which principal European powers would be willing to adopt', the country would send a delegate to the proposed conference.[36] For the US, the Tsar's invitation represented an opportunity to further step onto the world stage as a power to be reckoned with following its defeat of Spain.

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[32] Best, 'Peace Conferences', 622.

[33] Hay to Roosevelt, 27 July 1898, Theodore Roosevelt Papers, MSS 38299, LCMD.

[34] Hitchcock to Day, 25 Aug. 1898, *FRUS* 1898, 540-541.

[35] Hitchcock to Day, 3 Sept. 1898, ibid., 542-543.

[36] Moore to Hitchcock, 6 Sept. 1898, ibid., 543.

Naval considerations played no role in President McKinley's decision to accept the Tsar's invitation.

Britain took a more cautious view, initially indicating that because Prime Minister Salisbury was out of the country and the other members of the Cabinet 'scattered', it was impossible to give any reply other than that it 'warmly sympathize[d] and approve[d] the pacific and economic objects' of the Tsar's proposal.[37] Ambassador Scott had further meetings with Foreign Minister Muraviev. On 1 September, Muraviev informed Scott regarding the invitation's object of reducing arms expenditures:

> The question of the heavy burdens imposed on the populations by steadily increasing military Budgets affected more particularly the Continental States of Europe, but Great Britain … could not be insensible to it, as her very natural desire to maintain her naval superiority must also oblige her to incur similar sacrifices in order to keep pace with the increasing navies of other Powers and the inventions of science for multiplying the forces of destruction and defensive armour.[38]

Thus, Muraviev attempted to entice British acceptance of the Tsar's invitation as a possible means of reducing the country's naval expenditures.

The government of Lord Salisbury carefully surveyed other nations to determine whether they intended to accept the Tsar's invitation.[39] Most thought they had little choice but to accept. Japan believed (incorrectly) that the US would decline the invitation.[40] The Belgian government 'should much prefer the Emperor of Russia should not have made his proposal, but as His Imperial Majesty has done so, … it

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[37] Balfour to Scott, 30 Aug. 1898, in Foreign Office, *Correspondence Respecting the Peace Conference held at The Hague in 1899* (Confidential), FO 412/65 at 4. (A copy of the same 'confidential' volume is contained in FO 881/7473.)

[38] Scott to Salisbury, 1 Sept. 1898, FO 412/65, 10-11.

[39] See, for example, Pakenham to Salisbury, 6 Sept. 1898, ibid., 10; Howard to Salisbury, 9 Sept. 1898, ibid.; Scott to Salisbury, 10 Sept. 1898, ibid.

[40] Satow to Salisbury, 6 Sept. 1898, ibid.

must be accepted.'[41] By 10 September, Scott advised Salisbury that seven nations, including the US and Germany, had already accepted the Tsar's invitation.[42] As of the end of September, Britain had not accepted, however. Russia was still being told Salisbury was absent from England,[43] even though he had been receiving and sending multiple communications to his ministers and ambassadors regarding the proposed conference. In late September, Salisbury asked Sir Thomas H. Sanderson, the Permanent Under-Secretary of State for Foreign Affairs, 'to draft an acceptance in properly sympathetic terms indicating rather vaguely the desirability of a programme of some kind.'[44] By 5 October, a draft response had been prepared and provided to the Cabinet for review. It was, as Salisbury desired, a vague document, expressing sympathy with the objects of the Tsar's invitation and recognizing the increasing amounts spent by many nations on armaments and the desire to reduce the burdens such expenditures caused on the general population.[45]

In instructing Scott to accept, Salisbury noted that popular opinion in Britain greatly supported the Tsar's call for a conference. He also asserted, 'The perfection of the instruments thus brought into use, their extreme costliness, and the horrible carnage and destruction which would ensue from their employment on a large scale, have acted no doubt as a serious deterrent from war.' Thus, increasing armaments preserved peace – a late nineteenth century version of 'mutually assured destruction'. At the same time, Salisbury recognized that the burdens imposed on the general populace from ever-increasing arms expenditures 'must, if prolonged, produce a feeling of unrest and discontent menacing both to internal and external tranquillity.'[46] The stage was now set for some sort of conference on disarmament, which the major powers in the world would attend.

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[41] Plunkett to Salisbury, 4 Sept. 1898, ibid., 9.

[42] Scott to Salisbury, 10 Sept. 1898, ibid.

[43] Hitchcock to Hay, 29 Sept. 1898, *FRUS* 1898, 546.

[44] Sanderson to Scott, 28 Sept. 1898, Add MSS 52298, ff. 54-56, Scott Papers.

[45] Draft Despatch from the Marquess of Salisbury to Sir C. Scott, 5 Oct. 1898, CAB 37/48/73.

[46] Salisbury to Scott, 24 Oct. 1898, FO 412/65, 17. See also Best, 'Peace Conferences', 621-623.

First Skirmishes

Any chance that naval issues would not feature in some fashion at the proposed conference quickly disappeared, although the initial skirmishes over them took place in the United States, not Britain. Once more, the issue of the immunity of private property at sea raised its head in the US following the Spanish-American War, in which it had followed to the Declaration of Paris. On 4 November, Charles H. Butler, a New York lawyer, presented a memorial to President McKinley urging him to convene an international congress 'to consider and formulate rules for the freedom from capture of private property on the sea, whether belonging to neutrals or non-combatant citizens of belligerent nations, except in the case of contraband of war or violation of blockade.' He recognized the great increase in the size of the US Navy and 'the present uselessness of privateers'. In any future war the 'destruction of private property and the resulting paralysis of commerce would be terrible, unprecedented, and irretrievable.'[47] Butler petitioned the Committee on Commerce of the New York Chamber of Commerce, which approved his position.[48] He followed his memorial with a letter to the *New York Times* arguing that the principle would not affect the rights of belligerents against combatants.[49] The newspaper endorsed Butler's proposal, urging that the topic be taken up at the Tsar's conference. Recognizing Britain's long-standing opposition to the principle, the newspaper editorialized that 'Great Britain's interests would all lie in the protection of property at sea', similar to all other nations, because of the extent of its maritime commerce.[50]

The growing support for Butler's position was too much for one man who would figure prominently throughout the next ten years as the laws of naval warfare were debated and developed: Alfred Thayer Mahan. Widely known for authoring *The Influence of Sea Power Upon History, 1660-1783*, Mahan had been catapulted to international fame as a historian, naval strategist, and supporter of American imperialism. His book developed a worldwide following and was translated into numerous languages. Kaiser Wilhelm II, for example, considered *The Influence of*

[47] Pauncefote to Salisbury, Inclosure 1, 8 Dec. 1898, CAB 17/85, ff. 218-220.

[48] See ibid.

[49] Charles H. Butler, 'To Stop War Seizures: A Movement to Make Private Property Free from Capture', *New York Times* (14 Nov. 1898), p. 2.

[50] 'Commerce and War', *New York Times* (15 Nov. 1898), p. 6.

Sea Power to be 'a first-class work and classical in all points.'[51] A renowned Anglophile, Mahan had received honorary degrees from Oxford and Cambridge.[52] As one naval historian has written, 'Never has one book on naval history and strategy meant so much to so many.'[53] Mahan had retired from the US Navy in 1896, although he had been recalled from a European holiday to serve on the Naval War Board during the Spanish-American War.[54]

Mahan quickly swung into action, writing a letter to the *New York Times* countering Butler's arguments. He argued that destroying the maritime commerce of an enemy in war 'would reduce its powers of resistance, and so hasten peace. It is against commerce only that the present practice of seizing the merchant ships and cargoes of an enemy is directed. The strictly private property of the individuals on board, nor for purposes of trade, is inviolable'. Mahan claimed that the risk of having their property seized or destroyed would cause commercial interests to exercise a deterrent effect toward war. Moreover, while decades earlier the large American merchant marine and the small size of the US Navy necessitated support for the immunity of private property at sea, with the American merchant marine now 'almost naught', the United States was 'rather interested to hold over the heads of a possible enemy the chance of serious injury befalling him by stopping his maritime commerce.'[55] The *New York Times* responded, saying Mahan's view 'is bound with the progress of enlightenment to be abandoned.' It opined that if Mahan's arguments were adopted, the US would 'be forced to increase our navy in the ratio that our ocean trade grows.' American funds would be better spent re-building the nation's

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[51] Charles Carlisle Taylor, *The Life of Admiral Mahan* (London: John Murray, 1920), 131.

[52] Philip A. Crowe, 'Alfred Thayer Mahan: The Naval Historian', in *Makers of Modern Strategy from Machiavelli to the Nuclear Age*, ed. Peter Paret with Gordon Craig and Felix Gilbert (Princeton, NJ: Princeton University Press, 1986), 447.

[53] Hagan, *This People's Navy*, 190.

[54] Crowe, 'Alfred Thayer Mahan', 448; Robert Seager II, *Alfred Thayer Mahan: The Man and His Letters* (Annapolis, MD: Naval Institute Press, 1977), 334, 359, 363-366.

[55] A.T. Mahan, 'Commerce and War', *New York Times* (17 Nov. 1898), p. 6; Mahan to Editor of the *New York Times*, 15 Nov. 1898, *LP/ATM,*II: 610-612.

merchant marine.[56] Mahan and then Butler fired further broadsides.[57] Butler even privately printed and disseminated a lengthy rebuttal to Mahan's views on the issue.[58]

The debate over the principle of the immunity of private property at sea quickly left the purely domestic arena of the US and entered the international sphere. In his annual message to Congress, President McKinley briefly mentioned the Tsar's proposal. He told the Congress that because of the small size of the US military vis-à-vis its population, territorial size, and wealth, the Tsar's proposal could have 'no practical importance save as marking an auspicious step toward the betterment of the condition of the modern peoples and the cultivation of peace and good will among them; but … it behooves us as a nation to lend countenance and aid to the beneficent project.'[59] More importantly, McKinley announced that the US desired,

> in common with most civilized nations, to reduce to the lowest possible point the damage sustained in time of war by peaceable trade and commerce. … This purpose can probably be best accomplished by an international agreement to regard all private property at sea as exempt from capture or destruction by the forces of belligerent powers. The United States government has for many years advocated this humane and beneficent principle, and is now in position to recommend it to other powers without the imputation of selfish motives. I therefore suggest … that the Executive be authorized to correspond with the Governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations the principle

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[56] 'Capt. Mahan on Commerce and War', *New York Times* (19 Nov. 1898), p. 6.

[57] See A.T. Mahan, 'Commerce and War', *New York Times* (23 Nov. 1898), p. 6; Mahan to Editor of The *New York Times*, 21 Nov. 1898, *LP/ATM,*II: 613-614; Charles H. Butler, 'A Reply to Capt. Mahan', *New York Times* (27 Nov. 1898), p. 4.

[58] Charles Henry Butler, *A Letter Addressed to Captain A.T. Mahan in regard to Freedom of Private Property on the Sea from Capture during War* (Washington, D.C.: n.p., 1898), 1-7. Captain Charles H. Stockton, then president of the US Naval War College and later a delegate at the 1909 London Conference, also published a rebuttal to Butler. See Charles H. Stockton, 'The Capture of Enemy Merchant Vessels at Sea', *The North American Review* 168, no. 507 (Feb. 1899): 206-211.

[59] McKinley, 'Message of the President', 5 Dec. 1898, *FRUS* 1898, LXXXI.

> of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerent powers.[60]

McKinley's proposal quickly gained the attention of Britain. Sir Julian Pauncefote, Great Britain's ambassador to the United States, advised Salisbury of the memorials and resolutions engendered by Butler as well as the President's statement in his message to Congress. He told the Prime Minister that letters supporting the immunity principle were being circulated in response to the arguments advocated by Mahan and resolutions supporting President McKinley's statement would shortly be introduced in the Senate and House of Representatives. Pauncefote enclosed copies of Butler's petition and letters, including his response to Mahan.[61]

Surprisingly, Balfour indicated his support for reconsideration of Britain's long-standing opposition to the principle of the immunity of private property at sea. In a note to Salisbury, he advised:

> In my judgment the question of capture of private property at sea, and certain allied problems, deserve and require immediate consideration. I am inclined to think that our national interests would gain by the change; they would almost certainly gain if the change was limited to the relief of commerce *not attempting to run effective blockade*. In defence of such limitation the practice of war on *terra firma* might be in some respects pleaded.[62]

Salisbury quickly rejected Balfour's suggested reconsideration of Britain's position, saying:

> Like all stipulations which are supposed to hold good even while the parties making them are at war with each other, I do not see how the exemption is to be enforced. Contraband of war and ships trying to run a blockade will still be liable to seizure. It will be easy for a captain to shelter himself under one of these exceptions in most

[60] Ibid., LXXXIV-LXXXV.

[61] Pauncefote to Salisbury, 8 Dec. 1898, CAB 17/85, ff. 218-224.

[62] Balfour, 'Note', 24 Dec. 1898, CAB 17/85, f. 224 (emphasis in original).

cases. And to whom is the captured vessel to appeal? Certainly not to the captain; and no one else will meddle with it.

Prize Courts in France would be a poor reliance.[63]

These exchanges, between Butler and Mahan, and between McKinley, Balfour, and Salisbury, illustrate one of the essential conflicts that would characterize the adaptation and adoption of the laws of naval warfare throughout the years to come. That conflict depended on the point of view one took of the issue: as a neutral in time of war, or as a belligerent. Butler, McKinley, and at least to some extent Balfour, viewed the question of the immunity of private property at sea more from the standpoint of a neutral. Despite the recent success of the Spanish-American War, the civilian leadership in US could hardly conceive of becoming a belligerent in a war with a maritime power. As the *New York Times* pointed out, it was far better economically to spend the nation's resources on re-building the country's merchant marine than expanding and maintaining a large navy. Mahan and Salisbury, in contrast, viewed the issue from that of a potential belligerent and the creation (in the case of the US) and maintenance (in the case of Britain) of naval power and prestige. Mahan especially considered the issue from the standpoint of someone who wanted the United States to become a great naval power, particularly in the image of the Royal Navy. For him, the exercise of naval power required the ability to destroy the enemy's commerce so as to draw his fleet into a climactic naval battle.[64] Salisbury thought the immunity principle too easy to avoid and therefore impractical. Moreover, the Royal Navy was the preeminent naval power in the world. It was Britain's primary defensive shield and had to be maintained above all else. The essential question of 'point of view' would arise in both countries at the civilian and military levels repeatedly.

The Proposed Topics for the Conference

In the meantime, little seemed to be happening regarding the Tsar's invitation of the previous August. The American interim chargé d'affaires in Russia reported that as of 24 November, Muraviev had not determined any program for the

[63] Salisbury, 'Note', (n.d.) Dec. 1898, CAB 17/85, f. 224.

[64] A.T. Mahan, *The Influence of Sea Power Upon History, 1660-1783* (New York: Dover Publications, 1987 [1890]), 539-540.

conference and that most of his attention was focused on the reduction of armaments and related expenses.[65] The attention of President McKinley returned to the difficult negotiations of a peace treaty with Spain, which finally culminated on 10 December 1898.[66] Sanderson wrote a private letter to Scott on 29 December, stating he suspected that 'Russian Naval Circles' and 'high, perhaps very high but unofficial quarters of St. Petersburg Society' were opposed to any understanding with England.[67] In a typically odd Christmas letter to his 'Most beloved grandmamma', Kaiser Wilhelm II ridiculed the Tsar's proposed conference.[68]

On 11 January 1899, Russia's Foreign Minister provided notes to all nations that had accepted the Tsar's invitation, listing subjects for consideration at the conference. The note identified two objectives: '1. To check the progressive increase of military and naval armaments, and study any possible means of effecting their eventual reduction;' and '2. To devise means for averting armed conflicts between States by the employment of pacific methods of international diplomacy.'[69] The Russian note went on to propose eight subjects for discussion:

1. An understanding not to increase for a fixed period the present effective of the armed military and naval forces, and at the same time not to increase the Budgets pertaining thereto; and a preliminary examination of the means by which a reduction might even be effected in future in the forces and Budgets above-mentioned.
2. To prohibit the use in the armies and fleets of any new kind of fire-arms what-ever and of new explosives, or any powders more powerful than those now in use either for rifles or cannon.

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[65] Pierce to Hay, 24 Nov. 1898, *FRUS* 1898, 550.

[66] David F. Trask, *The War with Spain in 1898* (New York: Free Press, 1996 [1981]), 435-468.

[67] Sanderson to Scott, 29 Dec. 1898, Add MSS 52298, ff. 90-91, Scott Papers.

[68] Wilhelm II to Queen Victoria, 29 Dec. 1898, RA/VIC/MAIN/161/83.

[69] Scott to Salisbury, 12 Jan. 1899, in Foreign Office, *Correspondence Respecting the Peace Conference Held at The Hague in 1899* (Miscellaneous No. 1) (London: HMSO, 1899), 1. See also Hitchcock to Hay, 12 Jan. 1899, *FRUS* 1898, 550-551.

3. To restrict the use in military warfare of the formidable explosives already existing, and to prohibit the throwing of projectiles or explosives of any kind from balloons or by any similar means.
4. To prohibit the use in naval warfare of submarine torpedo-boats or plungers, or other similar engines of destruction; to give an undertaking not to construct vessels with rams in the future.
5. To apply to naval warfare the stipulations of the Geneva Convention of 1864, on the basis of the Additional Articles of 1868.
6. To neutralize ships and boats employed in saving those overboard during or after an engagement.
7. To revise the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, which has remained unratified to the present day.
8. To accept in principle the employment of good offices, of mediation and facultative arbitration in cases lending themselves thereto, with the object of preventing armed conflicts between nations; to come to an understanding with respect to the mode of applying these good offices, and to establish a uniform practice in using them.[70]

Five of the eight proposed subjects now dealt with issues of naval warfare either in whole or in part. The motivation for the Tsar's invitation had moved in the direction of naval armaments and warfare and away from Austria-Hungary's new rapid-firing artillery. In a private letter to Salisbury, Scott expressed doubts whether the Russian government actually would follow through with these topics, because they raised contentious issues. He also advised that Nicholas II was surprised his proposal had been labelled as 'quixotic', 'utopian', or 'impractical' because he had always described the conference as a 'Disarmament Conference' and desired 'to check the constant drain on his State Treasuries of sums required for the welfare and peaceful prosperity of the populations to fill the private coffers of inventors and manufacturers of new engines to destroy human life, and who became millionaires in

[70] Inclosure, Scott to Salisbury, 12 Jan. 1899, in *Correspondence Respecting 1899 Conference*, 3-4; Inclosure, Hitchcock to Hay, 14 Jan. 1899, *FRUS* 1898, 551-553.

proportion as they stimulated this drain by seeking about for new and more formidable destructives.'[71]

In submitting Russia's second circular to Salisbury, Scott advised that Muraviev stated the Russian government had noted the increasing armament expenditures by 'certain Powers', and that therefore it might not be an opportune time to hold an international conference of the sort envisioned by the Tsar. Muraviev had told him, 'Great Britain had been one of the Powers which had been recently arming.' Scott denied the accusation. Muraviev also indicated that the fact certain points were contained in the proposed agenda did not necessarily mean Russia would ultimately agree to discuss or agree with all of them.[72] Calvin DeArmond Davis, in his history of the United States and the 1899 Conference, asserts that Muraviev thought Britain would never agree to limit the Royal Navy and anticipated the US would never agree to limit its army. He therefore hoped they would decline the conference and thereby 'put both Britain and America in a bad light.'[73] Muraviev's statements to Scott suggest that he was not genuinely interested in discussing restraints on warfare or disarmament. If true, Muraviev's hopes were soon dashed. On 4 February the United States stated it would send a delegate to the conference.[74] Ten days later, in response to a further query from Muraviev, the US explicitly approved the topics suggested by Russia for discussion at the Conference.[75] No evidence exists that the US Department of the Navy was consulted prior to accepting Russia's proposed topics.

Given the number of topics touching upon naval issues, the Admiralty needed to be consulted, although the British Foreign Office was not that interested in what the Admiralty might have to say, and the Admiralty certainly was not interested in wasting time responding to such a silly proposition as the Russian agenda. Two days after receiving the Tsar's proposed topics for the conference, the Foreign Office sent to the Admiralty the unofficial list of the proposed subjects received from Scott. The

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[71] Scott to Salisbury, 12 Jan. 1899, Add MSS 52303, ff. 2-3, Scott Papers.

[72] Scott to Salisbury, 12 Jan. 1899, in *Correspondence Respecting 1899 Conference*, 1.

[73] Davis (1962), 51.

[74] Hay to Pierce, 4 Feb. 1899, *FRUS* 1898, 554.

[75] Pierce to Hay, 16 Feb. 1899, ibid., 555-556; Hay to Pierce, 17 Feb. 1899, ibid., 556.

Foreign Office advised that '[a]s soon as the text of the Note is received at the Foreign Office a copy will be transmitted for Their Lordships' Observations.'[76] The next day, Sanderson advised Scott that printed copies of the disarmament proposal were being sent 'to War Office and Admiralty for the observations of the Naval and Military Authorities and I am rather curious to see the result.'[77] When Sanderson sent the official copy of the Russian note to the Admiralty, he directed, 'Lord Salisbury will be obliged if Their Lordships will favour him with any observations they may have to offer on the contents of this communication.'[78]

The Admiralty's response was predictable. Indeed, tensions with the Foreign Office in the months leading up to commencement of the 1899 Conference are obvious from the Admiralty's files. On 18 January, Goschen minuted the First Naval Lord, Admiral Sir Frederick Richards, that he had written to Salisbury 'to ascertain whether the F.O. really wishes at this point to have our "observations".'[79] The same day, Goschen wrote Salisbury:

> If the Tsar's extraordinary conference is to come off soon, it will be necessary for us to talk the matter over in good time, as if a naval officer should have to attend as an expert he should need a great deal of coaching.
>
> I presume the great object will be with every Power to make it appear that it is one of the others who causes the inevitable collapse. So we shall have to proceed gravely, as if the proceedings were serious.
>
> The subjects brought forward in the Emp^{r} circular [show] the absurdity of the whole business conclusively.[80]

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[76] Sanderson to Admiralty, 14 Jan. 1899, ff. 6-7, ADM 116/98.

[77] Sanderson to Scott, 15 Jan. 1899, Add MSS 52298, ff. 92-93, Scott Papers.

[78] Sanderson to Admiralty, 17 Jan. 1899, ff. 11-12, ADM 116/98 (reproduced in *Correspondence Respecting the 1899 Conference* (Confidential), FO 412/65 at 26).

[79] Minute, Goschen to Richards, 18 Jan. 1899, f. 10, ADM 116/98.

[80] Goschen to Salisbury, 18 Jan. 1899, A93, 'Admiralty/War Office From & To – 1895-1900', ff. 98-99, Salisbury Papers.

Four days later, Goschen again wrote to Salisbury, stating: 'The F.O. have sent us the Russian circular & asked for our observations thereon. Need we communicate on the document at present? We should have to point out absurdities & impossibilities in every line, so is it necessary, or even expedient, to do so early & to put all our objections on record?'[81] Clearly, the First Lord did not wish to spend time and effort detailing the Admiralty's objections to Russia's proposed agenda.

While the First Lord of the Admiralty and the Royal Navy may have thought the Foreign Office's request for 'observations' questionable, and the Tsar's entire proposal absurd with the only real issue being how to ensure some other country was blamed for the conference's 'inevitable collapse', they soon learned that neither was the case. Long before the Admiralty presented its 'observations' to the Foreign Office, the Cabinet resolved to accept Russia's 11 January proposal of topics for the international conference. Specifically, Great Britain 'gladly accept[ed]' the Tsar's invitation for a conference to discuss reduction of land and sea armaments and means for preventing armed conflicts by diplomacy. With regard to the eight points specifically proposed for consideration, however, the government was more cautious, stating it 'would prefer for the present to abstain from expressing any definite opinion.'[82] In a private communication to Scott, Salisbury acknowledged, 'that it will be a very arduous task to put [Russia's eight] general proposals into a shape in which they would command the assent of all the European Powers.' He specifically advised Scott of two areas of concern: the need for clear definitions of terms in any agreement, and the method by which such agreements would be enforced.[83] Regardless, Britain had joined the international community in accepting the eight topics for consideration at the conference. The Admiralty now would be forced to take the upcoming conference seriously.

Conclusion

The 1899 Conference generally has been ignored by naval historians of the pre-First World War era. This chapter has shown that the Tsar's proposal for an

[81] Goschen to Salisbury, 22 Jan. 1899, Series E, 'G. Goschen correspondence, 1899-1900', ff. 1-4, Salisbury Papers.

[82] Salisbury to Scott, 14 Feb. 1899, FO 412/65, 30.

[83] Salisbury to Scott, 14 Feb. 1899, ibid., 30-31.

international conference arose in the context of an ever-expanding naval arms race, especially between Great Britain and Russia. The possibility of naval disarmament motivated the Tsar's invitation at least in part in light of the number of topics agreed for the conference that touched naval warfare. The reaction of the leading nations generally was one of scepticism. The US, which recently had thrust itself on to the world's stage as a new imperial, global power, quickly accepted the Tsar's invitation. Britain, cognizant of its status as the world's naval superpower and hesitant to agree to any conference that might hinder the extent or exercise of that power, reluctantly agreed to attend. In the US, the proposed conference was recognized as a means to drive international acceptance of the nation's long-cherished policy of the immunity of private property at sea. While the US Navy was not consulted regarding this policy, Alfred Thayer Mahan quickly rose in opposition, a position he would continue to assume throughout the next ten years.

In Britain, the Admiralty recognized the possible consequences of the topics proposed for the conference, the majority of which directly implicated naval planning and warfare. Its initial response was one of incredulity and a view that the government surely would not take the conference seriously. But the government did accept the proposed agenda likely because of the potential for a reduction in armaments spending. The Admiralty was not able to overcome the desire for financial relief. As First Lord Goschen recognized, the government had agreed implicitly to consider questions affecting the Royal Navy, contrary to previous international conferences such as the Brussels Conference of 1874.[84] Thus, for the Royal Navy, 24 August 1898 was a watershed. Unlike the 1856 Declaration of Paris, which was adopted without its consultation, the Royal Navy now was forced for the first time – begrudgingly and against its will – to participate in an international conference at which limitations on the conduct of naval warfare would be considered. Once opened by Tsar Nicholas II's unexpected invitation and Great Britain's acceptance, the Pandora's Box of the laws of naval warfare was never to be closed.

[84] Goschen, Minute, 14 May 1899, f. 21, ADM 116/98.

Chapter 3

A Secret Proposal – and Serious Preparations

Once the United States and Great Britain agreed to attend the conference and accepted the basic principles and eight topics for discussion, they needed to prepare. Neither nation took the upcoming conference lightly, but the focus in each was decidedly different from a naval standpoint. The US Navy had no involvement in preparations for the conference. The focus of the United States primarily was to follow the lead of Britain in terms of composition of the delegation. However, in one significant respect – the adoption of the principle of the immunity of private property at sea – the goals of the US for the conference were diametrically opposed to those of Great Britain. Britain's actions preceding the conference were surprising given the previously sacrosanct status of the Royal Navy. Within two weeks of accepting the conference's proposed topics, Britain made a secret offer to reduce naval expenditures to Russia. This proposal, apparently made without the knowledge of any uniformed member of the Royal Navy, revealed the extent to which Lord Salisbury was willing to use the upcoming conference as an impetus for a reduction in naval expenditures, at least vis-à-vis Russia. This proposal, and the Admiralty's views on the proposed topics, further exposed the tensions between the government and the Senior Service that had first appeared in January 1899.

This chapter first details Great Britain's secret, back-channel offer of a reduction in naval expenditures to Russia. While Salisbury's proposal served a variety of domestic and international needs, the fact it was made shows that at least as of March 1899, Russia was viewed as a significant potential adversary and that Britain was willing to engage in real naval reductions. The selection of the British and American delegations to the conference is then discussed. The traditional history of the events surrounding the appointment of then-Vice Admiral Sir John A. Fisher to be Britain's naval delegate is challenged and corrected. In contrast to the British process, the selection of the United States' delegation, including Alfred Thayer Mahan, is shown to have been far less thoughtful. The Royal Navy's extensive

efforts to evade or minimize involvement in the conference then are discussed. The Admiralty wanted to avoid a repetition of the events surrounding adoption of the 1856 Declaration of Paris, when it was not consulted. Finally, the instructions to the delegations of each country are discussed as the stage is set for the 1899 Conference.

Great Britain's Secret Offer to Russia

Great Britain's secret, back-channel offer to reduce naval expenditures to Russia has not previously been fully revealed or discussed. None of the published pre-First World War naval histories reveal the offer. Arthur Marder briefly discusses Goschen's public proposal for naval arms limitation before the House of Commons on 9 March 1899 in two paragraphs, but he does not reveal the direct proposal to Russia made days earlier.[1] Indeed, there is no evidence Marder was aware of the secret offer. Neither the official 'public' nor the 'confidential' publications of Britain's correspondence relating to the 1899 Conference mention it.[2] The existing Cabinet files for the relevant time period do not mention the proposal.[3] No indication of the offer exists in the extant Admiralty files relating to the 1899 Conference.[4] While the offer was discussed and approved by the Cabinet and apparently disclosed to Queen Victoria, the only individuals directly involved appear to have been Salisbury, Goschen, and Sir Charles Scott, the ambassador to Russia. No evidence exists that any member of the Royal Navy knew of the offer. Indeed, the proposal appears to have been raised, agreed, and made in the space of twenty days, with the critical acts occurring over less than a week.

Britain's secret offer arose out of the on-going naval arms race, especially with regard to Russia. Goschen revealed his naval estimates for 1899-1900 to Hicks Beach in January 1899, much to the latter's consternation. Goschen warned that while he had endeavoured to reduce the estimates as much as possible, the increase

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[1] Marder (1940), 346.

[2] See generally Foreign Office, *Correspondence Respecting the Peace Conference Held at The Hague in 1899* (Miscellaneous No. 1) (London: HMSO, 1899); *Correspondence Respecting the Peace Conference Held at The Hague in 1899* (Confidential), FO 412/65.

[3] See generally CAB 37/49, CAB 37/50, CAB 37/51.

[4] See generally 'Case 258', ADM 116/98; 'Respecting the Exemption from capture of private property in vessels in time of War', ADM 1/7422B.

still would be 'very large'. He reminded Hicks Beach of his warning that the July 1898 supplemental program requested and obtained then did not mean the naval estimates for 1899-1900 would be lower.[5] Hicks Beach complained to Salisbury that he was 'only just able to make any forecast of the financial position for 1899-1900: for Goschen delayed all discussion of his estimates until [*sic*] Wednesday, and has not yet given me his final figures. But I am sorry to tell you that the prospect is very disagreeable.' Hicks Beach was concerned how the increases could be financed. He favoured a tax increase, and asked Salisbury to call a meeting of the Defence Committee following the Cabinet meeting set for 1 February to discuss the issue.[6]

Salisbury called a Defence Committee meeting as requested. However, while he told Hicks Beach, 'Goschen is insatiable', Salisbury's concerns also were about how to finance the increased naval expenditures. Salisbury preferred a loan to a tax increase. He also thought Goschen might reduce his request.[7] Indeed, Goschen reduced his estimates by £220,000. Goschen proposed estimates he 'could defend as absolutely necessary in [his] judgment', and if Hicks Beach had 'the intense vexation or anxiety of having to find the money for this gigantic expenditure & surprises which you consider sprung upon you, I can assure you that I, too, have my full share of worry & anxiety'.[8] Hicks Beach warned Salisbury that even with Goschen's reductions, the new budget would be an 'alarmist budget … because of the amount

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[5] Goschen to Hicks Beach, 22 Jan. 1899, ibid.

[6] Hicks Beach to Salisbury, 27 Jan. 1899, D2455/X4/1/1/13, ibid.

[7] Salisbury to Hicks Beach, 28 Jan. 1899, D2455/X4/1/1/12, ibid. Hicks Beach later told Goschen directly that he was 'insatiable'. See Goschen to Hicks Beach, 23 Feb. 1900, D2455/X4/1/1/32, ibid.

Marder suggests that Salisbury and Hicks Beach opposed Goschen's estimates *per se*. *See* Marder (1940), 345-346. Nicholas Lambert, without reference, asserts that Salisbury 'did not … forbid Hicks-Beech [*sic*] from canvassing his other Cabinet colleagues for support over the issue.' Nicholas A. Lambert, *Sir John Fisher's Naval Revolution* (Columbia, SC: University of South Carolina Press, 1999), 30-31. Neither position is correct. Salisbury and Hicks Beach's concerns were regarding *how* to pay for the increased naval expenditures. As Hicks Beach told Salisbury over a year later, 'I need not remind you that I have never seriously resisted any increase of expenditure on our Navy.' Hicks Beach to Salisbury, 21 Oct. 1900, D2455/X4/1/1/13, Hicks Beach Papers.

[8] Goschen to Hicks Beach, 29 Jan. 1899, D2455/X4/1/1/32, ibid.

proposed to be expended, not because of the way in which that amount may be provided: and we should not make it less alarmist by borrowing instead of taxing.'[9]

On 31 January 1899, Goschen presented the naval estimates for 1899-1900 to the Cabinet. He '[r]egret[ted] that the Estimates which I have to submit to the Cabinet should be of unprecedented magnitude, exceeding by a very large sum the swollen Estimates of last year.' Goschen advised that his previous estimates had been based upon the shipbuilding of France and Russia. However, the Tsar's extraordinary *ukase*, amounting to the equivalent of about £9 million, would result in Russia starting construction of eight new battleships over three years. With regard to cruisers, both France and Russia were building more first-class armoured vessels, and 'both are pushing ahead as fast as they can.' France, in particular, had 'begun to recognize that it is by cruisers rather than by battleships that they can damage us most.' In order to keep up with France and particularly Russia, Goschen presented a total navy estimate of more than £26.6 million, an increase of nearly £2.9 million over his 'colossal sum' presented in March 1898. This budget included two additional battleships and five new cruisers.[10] Goschen later 'sold' the estimates to Hicks Beach and the Cabinet by deferring some of the actual expenditures proposed for 1899-1900 to subsequent financial years and assuring Hicks Beach that, 'Except under extraordinary pressure, no fresh liabilities will be incurred in 1899-1900.'[11]

The seed that ultimately became the proposal for reduction of naval expenditures to Russia apparently was planted at the Defence Committee meeting on 1 February. Arthur Balfour apparently suggested that Goschen should not make any specific reference to the two new battleships in his presentation to the House of Commons. While Goschen thought there was 'extreme difficulty' in carrying out 'Balfour's idea', he told Hicks Beach that he could be vague as to the type of new ships proposed to be built in his printed statement and appendix to the House. 'Thus, I am free to say as much or as little in explanation, as I please.' Goschen then told Hicks Beach:

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[9] Hicks Beach to Salisbury, 30 Jan. 1899, D2455/X4/1/1/13, ibid.

[10] 'Navy Estimates, 1899-1900', 31 Jan. 1899, CAB 37/49/7, 1-11.

[11] Goschen to Hicks Beach, 4 Feb. 1899, D2455/X4/1/1/32, Hicks Beach Papers. See also Hicks Beach to Goschen, 24 Jan. 1900, ibid.; Goschen to Hicks Beach, 23 Feb. 1900, ibid.

> I can make the statement verbally as to the Russian conference (if this should be thought wise), or as to the question of their continuing their programme and commencing or not further battleships in execution of their original design (or another plan would be to state the two battleships in the usual manner in the printed statement, but to explain that their construction would be dependent on Russian action.)[12]

While Goschen thought Russia would start construction of additional battleships, he recognized the advantage in vagueness, which would not allow France and Russia 'to assert that we are laying down more battleships.'[13]

The Cabinet resolved at its meeting on 14 February to accept Russia's earlier proposal of eight topics for the conference.[14] However, acceptance of the Tsar's proposal for the conference was not the only topic of discussion on that date. As Salisbury informed Queen Victoria the next day, 'It was also proposed that the Emperor's government should be invited to consider the question of postponing certain specified naval expenditures on each side until next year. But after long discussion it was thought better to take no step of the kind till after the naval estimates had been produced.'[15] Several weeks later, Queen Victoria implied her consent, telling Salisbury that she opposed an increase in income taxes and 'hopes naval expenses may soon diminish'.[16]

By 1 March Salisbury, with the undoubted assistance of Goschen,[17] had decided to make a direct proposal to reduce naval expenditures to Russia before

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[12] Goschen to Hicks Beach, 4 Feb. 1899, ibid.

[13] Ibid.

[14] Salisbury to Scott, 14 Feb. 1899, FO 412/65 at 30.

[15] Salisbury to Queen Victoria, 15 Feb. 1899, RA/VIC/MAIN/A75/51.

[16] Queen Victoria to Salisbury, 8 Mar. 1899, Series F, 'Letters from the Queen, 1899', Salisbury Papers.

[17] Given his background, Goschen cannot have been unaware of the financial implications for the nation of his proposed naval estimates. Goschen had served as a director of the Bank of England at a young age, his family was in banking, and he was Salisbury's chancellor of the exchequer from 1886 to 1892. While he promoted increased naval building in response to the programs of Russia and other nations,

presentation of the new, record naval estimates to the House of Commons. In a 'confidential' letter to Salisbury, Goschen advised the Cabinet was concerned of

> the possibility of the Russian Government, or the Czar himself, being startled at the very large increase in our Naval Estimates for 1899-1900, with the international disarmament Conference in prospect; and that it may be expedient under the circumstances that Sir C. Scott should have some acquaintance with the causes and scope of this increase, which amounts to about £2,800,000 over the estimates of the present year.[18]

Goschen then set forth in detail the prior year's supplemental estimates and the fact Russia's 'extraordinary programme of ship-building' announced in the spring of 1898 and its appropriation of 90 million rubles for four battleships and additional cruisers had necessitated Britain's need to add four battleships and four cruisers in its supplemental estimates for 1898. 'The Czar can therefore not be surprised at the increase in our Estimates, nor see anything in them inconsistent with our readiness to enter the Disarmament Conference which he has initiated.' Goschen stated that in addition to the previously announced naval construction, the government intended to include two new battleships for 1899-1900. 'I may frankly say that we propose to lay them down, in the main to balance the further construction of battleships which has been announced from Russia.'[19] Then Goschen's letter, ostensibly to the Prime Minister but likely for the benefit of Sir Charles Scott, suggested that Britain make a proposal for mutual reduction of naval expenditures to Russia:

> The question may fairly arise, if Russia and we are prepared in an international conference to enter at all upon the subject of a diminution in constructing battleships, whether we could not exchange views as to the possibility of Russia on her side

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Goschen certainly was not an unthinking navalist who did not understand finance. See Thomas J. Spinner, Jr., 'Goschen, George Joachim, first Viscount Goschen (1831-1907)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/33478.

[18] Goschen to Salisbury, 1 Mar. 1899, A93, ff. 101-103, Salisbury Papers.

[19] Ibid.

> undertaking not to order or commence any new battleships in 1899-1900 beyond the four ordered under the … ukase, and we undertaking not to proceed with the two inserted in our forthcoming Estimates. Such a hint might test the sincerity of Russia, and at the same time afford a proof of our sincerity.
>
> The Cabinet seemed inclined to wish that I should publicly throw out such a suggestion in moving my Estimates on the 9th of March, as it would show the British public that we were not unprepared to respond in some measure to the peaceful overtures implied in the invitation to the conference, but I presume this should be kept open till the next Cabinet.[20]

Whether the Cabinet imagined a formal, public offer in the context of Goschen's presentation of the naval estimates or anticipated a secret proposal to Russia is not clear. Goschen's letter to Salisbury suggests further consultations were expected. However, given that Ambassador Scott subsequently communicated the Tsar's response to the secret offer directly to Goschen, the two of them must have discussed the plan. In any event, Salisbury decided to act immediately, because on the same date he sent a copy of Goschen's letter, marked 'private' to Scott,[21] stating that Goschen wanted him to have it because it explained 'the very large addition to our warlike estimates at a time when we are preparing to enter a Conference of which the object is to reduce armaments.' He then told Scott, 'It is for you to use exactly so far as you judge expedient.' Salisbury pointed out that Russia was being duplicitous by continuing to arm unless and until all the other nations agreed to 'retrench their armaments'. He also did not see how any agreements with Russia could survive its recent actions in China, where it was taking a position contrary to the Newchwang Railways Loan Agreement of September 1898 and the Anglo-Russian understanding

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[20] Ibid.

[21] It is not easy to confirm that Salisbury sent Goschen's letter of 1 March to Scott on the same day. The two letters are in different files (A93 and A/129) in the Salisbury Papers. However, Scott's papers at the British Library establish that Salisbury sent a copy of Goschen's letter on the same date. See Salisbury to Scott, 1 Mar. 1899, Add MSS 52297, ff. 89-90, Scott Papers; Goschen to Salisbury, 1 Mar. 1899, ff. 91-93, ibid.

regarding the terms of the loan repayment.[22] Scott apparently understood, or was told in some manner by Salisbury, that he was to make a proposal directly to Russia to reduce naval expenditures, because that is what he almost immediately did upon receipt of Salisbury's communications.

On 6 March, Scott 'made use of the large discretion' Salisbury had given him. He met that day with Foreign Minister Muraviev and read him most of the contents of Goshen's letter to Salisbury, squarely placing the blame for the forthcoming increases in Britain's naval estimates on Russia's shipbuilding program. Scott told Muraviev that the Tsar should not be surprised, therefore, by the increases, and that they would be under discussion that week in Parliament. Scott then advised Muraviev, 'but I have received a private hint, which I am at liberty to make a discreet use of in talking with you on this subject', that the two countries should 'exchange views as to the possibility of Russia on her side undertaking not to order or commence any new battleships in 1899-1900 beyond the 4 ordered … and England on her side undertaking not to proceed with the two battleships inserted in our forthcoming estimates.' Scott asked that Muraviev should regard the 'hint' as a 'strictly confidential & private form, for use, if you think proper, in approaching' the Tsar. Muraviev agreed that the offer would be kept secret between Scott, the Tsar, and himself.[23]

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[22] Salisbury to Scott, 1 Mar. 1899, A/129, f. 295, Salisbury Papers. On 26 February 1899, the Russian chargé d'affaires accused Great Britain of violating the terms of the agreement reached in September 1898 by placing a mortgage on the property of the Chinese railway line to ensure repayment of the loan to British banks. Salisbury quickly responded and rejected the accusation. See MacDonald to Salisbury, 28 Feb. 1899, in Foreign Office, *Correspondence between Her Majesty's Government and the Russian Government with regard to their respective Railway Interests in China* (China No. 2 (1899)) (London: HMSO, 1899), 65-66; Salisbury to MacDonald, 2 Mar. 1899, ibid., 66. For a discussion of the China issues in early 1899, see T.G. Otte, *The China Question: Great Power Rivalry and British Isolation, 1894-1905* (Oxford, UK: Oxford University Press, 2007), 171-173.

[23] Scott to Mouravieff, 6 Mar. 1899, inclosure to Scott to Salisbury, 9 Mar. 1899, A/129, ff. 182-184, Salisbury Papers.

Several days later, Scott received the Tsar's response from Muraviev and immediately advised Salisbury and Goschen.[24] The urgency of the communications to them was because Goschen was to announce the new naval estimates to the House of Commons on 9 March. Muraviev told Scott that while the Tsar was favourably impressed with the 'hint', he did not think the time was ripe for mutual restrictions on each country's naval expenditures. The Tsar also said the 'sole object' of Russia's shipbuilding program 'was to bring her naval forces up to the standard which her position required & this ought not to be inferior to that of Japan for instance.' Not surprisingly, therefore, Muraviev further indicated the Tsar was less optimistic that topics relating to naval disarmament would be successful at the forthcoming conference.[25]

Goschen's speech to the House of Commons the evening of 9 March masterfully hid the fact that only three days earlier a secret naval reduction proposal had been made to the Russian government. The British government, contrary to past practices, had not published the proposed naval estimates in advance. In his speech, Goschen first covered the more modest increases in the estimates relating to personnel, repairs, and construction under previous estimates.[26] He then turned to the naval construction estimates for the new year. Goschen stated that he did not want the estimates to be publicized without first having the opportunity to explain the reasons for their significant increase lest they 'be considered the Estimates of

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[24] Scott to Goschen, 9 Mar. 1899, Add MSS 52303, f. 14, Scott Papers; Scott to Salisbury, 9 Mar. 1899, A/129, ff. 182-184, Salisbury Papers; Scott to Salisbury, 10 Mar. 1899, f. 189, ibid.

[25] Scott to Salisbury, 9 Mar. 1899, A/129, f. 182, Salisbury Papers; Scott to Salisbury, 10 Mar. 1899, f. 189, ibid.

Scott also communicated information obtained regarding Russia's shipbuilding program, as separately requested by Goshen. He told Goschen that the Admiralty's information regarding battleships and cruisers in hand was correct, but only one battleship, one first class cruiser, and four second class cruisers were projected to be delivered in 1903 or 1904. Scott thought Russia would find it very difficult to complete its supplementary naval building program due to lack of cash when needed, and in any event the program was not actually being completed as quickly as had been reported. Scott to Goschen, 7 Mar. 1899, A/129, f. 181, Salisbury Papers; Scott to Goschen, 9 Mar. 1899, Add MSS 52303, f. 14, Scott Papers.

[26] *Hansard* 4th ser., HC Deb., vol. 68, cols. 306-319 (9 Mar. 1899).

aggression'. Goschen's presentation, therefore, was the first that members definitively learned of them.[27] Goschen reminded the House that the supplementary estimates the previous year had been caused solely by Russia's *ukase* of 90 million rubles. He added that France, Russia, the United States, Japan, Italy, and Germany were all increasing their naval expenditures, but that he had to look at 'one case in particular'. When he considered the naval expenditures of 'the two most powerful nations', France and Russia, France's increase was 'very small'. In contrast, Russia's increase in naval estimates was very large and Britain had to respond to protect itself. Accordingly, Goschen proposed that Britain build two additional battleships and five more cruisers.[28] He stated the reason for the addition of the five cruisers was because the country's potential enemies – Russia and France – had adopted a strategy

> to wear out the patience of this country by prolonged attacks upon our commerce, our food supply, and our sources of production. … The plan now is to build very fast cruisers which shall prey upon our commerce. … We cannot sit still in the face of construction of cruisers intended for that purpose. We know that purpose, and it is our bounden duty to defeat it. It is in consequence of this that our Programme for the present year has been proposed.[29]

Goschen then turned to the forthcoming 'International Conference'. He covered the secret proposal to Russia by generally and vaguely proposing that 'if the other great Naval Powers should be prepared to diminish their Programme of shipbuilding, we should be prepared on our side to meet such a procedure by modifying ours.' This proposal was evidence Britain genuinely wanted the

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[27] Some indication of the magnitude of the estimates was revealed in a one-paragraph notice in *The Times* of 9 March. Although the notice over-estimated the total for the naval budget, the allocation to new shipbuilding in response to Russia was underplayed. See 'The Naval Programme', *The Times* (London), 9 Mar. 1899, p. 10, col. 1. When asked by a member of the House to explain why the figures had appeared in *The Times* that morning, Goschen first chastised the member for interrupting him. He then claimed, 'the Admiralty have no knowledge of the matter,' and attributed the newspaper report to 'some breach of trust in some quarter or another.' *Hansard* 4th ser., HC Deb., vol. 68, cols. 321-322 (9 Mar. 1899).

[28] Ibid., cols. 319-323.

[29] Ibid., cols. 322-323.

forthcoming conference to 'succeed in lightening the tremendous burdens which now weigh down all European nations'.[30]

Salisbury had carefully crafted Britain's offer to Russia. The decision to make the offer in great secrecy and with a minimum of persons involved is shown by the critical correspondence between only three individuals. Moreover, Goschen did not reveal the extent of the naval estimates for 1899-1900 to the House prior to taking the floor on 9 March. He thus retained the ability to make changes if Russia had responded affirmatively. That Britain would make such a secret offer shows the pressure being placed on the economy and the government by the naval arms race. Making the proposal undoubtedly quieted efforts in the Cabinet to reduce naval expenditures. The offer also placed the country in a positive light with Russia, with whom diplomatic conflicts were continuing, and thereby served to calm international tensions.[31] Indeed, Goschen eventually thanked Scott for his efforts and told him 'it seems as if we … were the one of all the Governments of Europe, who have met the Czar's invitation in the most cordial spirit.'[32] At the same time, the offer held no real risks to Britain. The government's proposal was a no-lose proposition. Due to its preponderant size compared with the Russian navy (or the navies of other possible adversaries), if Russia had accepted the offer any reduction in naval expenditures would have left the Royal Navy still in a far more powerful position than any enemy fleet or combination of fleets. But the fact that Britain felt compelled by the on-going naval arms race with Russia to secretly propose to reduce naval expenditures shows the extent to which at least the civilian leadership was willing to consider the upcoming conference as a means for limiting the previously sacrosanct Royal Navy.

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[30] Ibid., cols. 306-324.

[31] Within weeks of the disarmament offer, Britain and Russia reached an accord on Chinese railway interests, generally eliminating the source of friction between the two countries that had existed for some time. See Scott to Salisbury, 15 Mar. 1899, in *Correspondence in China* (China No. 2), 71; Scott to Mouravieff, 20 Mar. 1899, ibid., 77; Scott to Salisbury, 29 April 1899 and Inclosures 1 and 2, ibid., 89-90. See also Otte, *The China Question*, 173-176.

[32] Goschen to Scott, 30 Mar. 1899, f. 174, Add MSS 52301, Scott Papers.

Selecting the British Delegation: Fisher 'is cunning'

Once Britain accepted Russia's proposed program for the conference and agreed to attend on 14 February, the question of who would comprise the delegation naturally arose. Speculation in January was that the delegation would consist of Salisbury, Lord Rosebery (former Liberal prime minister), and the Prince of Wales (the future King Edward VII).[33] Goschen previously had asked Lord Salisbury if he would have to send a naval officer.[34] Goschen renewed his query on 25 February, telling Salisbury he 'may have to bring a naval delegate from a distance, or to make arrangements for keeping one officer here who would otherwise go abroad.'[35] Serious consideration of who the members of Britain's delegation would be did not occur until after Russia turned down the offer of naval disarmament. Salisbury apparently decided on Britain's representatives in little more than a week.

In response to a request from President McKinley to Ambassador Pauncefote regarding the composition of the British delegation, Salisbury responded that while a definitive answer could not be made until the starting date for the conference was set,[36] the British delegation would comprise at least one well-recognized diplomat and military, naval, and legal experts to assist him.[37] Nevertheless, Salisbury had already decided that Pauncefote would lead the delegation, accompanied by another diplomat and legal, military, and naval representatives.[38]

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[33] Holls to White, 3 Jan. 1899, box 20, vol. 19, Holls/Columbia Papers; Holls to White, 21 Jan. 1899, ibid.

[34] Goschen to Salisbury, 18 Jan. 1899, A93, ff. 98-99, Salisbury Papers.

[35] Goschen to Salisbury, 25 Feb. 1899, Series E, 'G. Goschen correspondence, 1899-1900', f. 7, Salisbury Papers.

[36] Salisbury actually had learned on 8 March that the starting date for the conference would be 18 May 1899. Howard to Salisbury, 8 Mar. 1899, FO 412/65 at 38.

[37] Pauncefote to Salisbury, 9 Mar. 1899, FO 412/65 at 39; Draft, Salisbury to Pauncefote, 10 Mar. 1899, FO 83/1699; Salisbury to Pauncefote, 10 Mar. 1899, FO 412/65 at 41.

[38] Hay to McKinley, 11 Mar. 1899, series 1, reel 6, McKinley Papers. Pauncefote's selection likely was due to his success in negotiating an arbitration treaty with the US and an agreement to arbitrate a boundary dispute between British Guiana and Venezuela. See Salisbury to Pauncefote, 16 May 1899, FO 412/65 at 70.

That Vice Admiral Sir John Arbuthnot Fisher was Britain's naval delegate to the Conference is well known. But the basis of his selection has not been examined adequately. Late in life, Fisher attributed his selection to having strongly argued against Lord Salisbury's brother-in-law while serving as director of naval ordnance in 1886. According to Fisher, he was unexpectedly selected by Salisbury, without consultation with Goschen, because Salisbury knew from his exposure to Fisher in 1886 that Fisher 'should fight at the Peace Conference.'[39] Fisher claimed he learned the story of his selection from Count Nigra, the Italian ambassador to Austria-Hungary.[40] Fisher's biographers have generally repeated this story.[41] However, the dates of the events related by Fisher (or Count Nigra) do not correspond with the known timeline relating to the 1899 Conference and the events leading up to it, and therefore Fisher's hearsay-based story is questionable on its face.

Fisher had been appointed commander-in-chief of the North America and West Indies fleet in August 1897, approximately four months after being promoted to vice admiral.[42] He was then fifty-six years old and had been in the Royal Navy since 1854. He had served as Third Naval Lord – Controller of the Navy – in the Admiralty from 1892 until his appointment to the West Indies Fleet.[43] The West Indies Fleet was a backwater of the Royal Navy, and Fisher undoubtedly expected to retire from that position.

Fisher had made a favourable impression on Goschen during the approximately two years they were both in the Admiralty (1895-1897), and also had long been a favourite of Queen Victoria.[44] At least as of 10 March 1899, after the US asked who would comprise the British delegation, Salisbury had not yet made up his

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[39] Admiral of the Fleet Lord Fisher, *Some Notes by Lord Fisher for his Friends* (London: Westminster Press, 1919), 58-59 (copy No. 1 of 100 in *ESHR* 17/5); Admiral of the Fleet Lord Fisher, *Records* (London: Hodder and Stoughton, 1919), 53-55; Fisher, Manuscript notes, *FISR* 9/2, f. 5104.

[40] Fisher, *Some Notes*, 58; Fisher, Manuscript notes, FISR 9/2, f. 5104.

[41] See Reginald H. Bacon, *The Life of Lord Fisher of Kilverstone* (London: Hodder and Stoughton, 1929), I: 120; Mackay (1973), 192; *FGDN* I, 102-103.

[42] Mackay (1973), 212.

[43] Ibid., 1, 3, 204, 213; *FGDN* I, 99-101.

[44] Mackay (1973), 173-74, 213.

mind regarding any appointee other than Pauncefote.[45] However, by 17 March he had decided to appoint Fisher as naval delegate.[46] Some time prior to that date, Goschen and Salisbury had conferred, and Goschen had suggested Fisher to Lord Salisbury 'as probably the best man; and I don't think we could do better. He knows a great deal & is cunning, but I doubt his speaking much French.'[47] No evidence has been found that Salisbury or Goschen considered any other naval officer. By 19 March, Goschen had heard 'indirectly' that Fisher's name had been submitted to the Queen and asked for confirmation, so that Fisher could be ordered from the West Indies at once.[48] Salisbury apparently confirmed his decision, because Fisher received a telegram from Goschen on 22 March advising he had been selected to be the naval delegate to the conference and that afterwards he would become commander-in-chief of the Mediterranean Fleet. Fisher feigned disappointment at having to leave the West Indies, but acknowledged that the Mediterranean 'is *the* tip-top appointment of the Service, and, of course, if there's a war, there's a peerage or Westminster Abbey.'[49]

The day after receiving the telegram Fisher sent a letter to then-Captain Wilmot Fawkes, who was serving as private naval secretary to Goschen. Fisher's letter suggests his selection as naval delegate had not come as a complete surprise and intimates that Fawkes may have played some role in Fisher's selection and promotion to command the Mediterranean Fleet.[50] Moreover, in a letter sent during the Conference, Fisher stated he did not 'know if it entered into Mr. G's calculations when he selected me, but the fact of my being nominated as Commander-in-Chief of the Mediterranean has fetched all the foreigners very much … and it has helped us along very much.'[51] Thus, contrary to Fisher's later 'recollection' as repeated by his biographers, his appointment to the 1899 Conference resulted from deliberate

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[45] Salisbury to Pauncefote, 10 Mar. 1899, FO 412/65, 41; Hay to McKinley, 11 Mar. 1899, series 1, reel 6, McKinley Papers.

[46] See Barrington to Welby, 17 Mar. 1899, A93, ff. 191-192, Salisbury Papers.

[47] Goschen to Salisbury, 19 Mar. 1899, Series E, 'G. Goschen correspondence, 1899-1900', ff. 9-10, Salisbury Papers.

[48] Ibid.

[49] Fisher to Neeld, 23 Mar. 1899, *FGDN* I, 139 (emphasis in original).

[50] Fisher to Fawkes, 23 Mar. 1899, *FISR* 1/1, ff. 62-63.

[51] Fisher to Fawkes, 4 June 1899, *FISR* 1/1, ff. 64-65.

discussions between Goschen and Salisbury. Despite his deficiencies in the language of diplomacy (French) and his lack of previous diplomatic experience, Fisher was selected because he was 'cunning'.

At the same time, Salisbury also decided that Major General Sir John Ardagh, then the director of military intelligence, would be the military representative.[52] Ten days after receiving the official invitation to send a delegation, Salisbury announced that Pauncefote and Sir Henry Howard, Great Britain's minister to The Netherlands, would be the first and second plenipotentiaries, and that Fisher and Ardagh would join them as naval and military delegates.[53] The British delegation thus was fixed with a minimum of internal discussion and without any apparent outside influence.

Selecting the United States Delegation: Mahan as a Postscript

In contrast to selection of the British delegation, determination of the American delegation involved much more political and behind the scenes manoeuvring. Still, the final selection process was completed in a matter of weeks based largely on the composition of Britain's delegation. As early as October 1898, political activists started trying to influence the membership of the US delegation.[54] But after accepting Russia's invitation to the international conference, President McKinley's attention quickly turned to the growing insurrection in the Philippines and efforts to obtain ratification of the peace treaty with Spain.[55] However, that did not stop individuals from pressing their suggestions on the president. A group visited McKinley in January 1899 to urge the appointment of the president of Northwestern University.[56] Others urged the appointment of Andrew D. White, the former president of Cornell University and the US ambassador to Germany.[57] A number of individuals lobbied for their own appointment, including Bishop John Ireland of St.

[52] Barrington to Welby, 17 Mar. 1899, A93, ff. 191-192, Salisbury Papers.

[53] Salisbury to von Goltstein, 18 Apr. 1899, *Correspondence Respecting 1899 Conference*, 8-9.

[54] See, for example, Holls to White, 7 Oct. 1898, box 20, vol. 19, Holls/Columbia Papers.

[55] Holls to White, 21 Jan. 1899, box 20, vol. 19, Holls/Columbia Papers.

[56] Davis (1962), 66-67.

[57] Holls, 'Visits to Washington, 1897-1900', 18 Jan. 1899, box 10, Holls/Columbia Papers.

Paul, Minnesota.[58] McKinley's reaction was to do nothing. By early February 1899, he had decided he would not decide on the delegation or its size until he learned what the European powers intended to do.[59] Serious consideration of who should comprise the American delegation therefore did not begin until after Pauncefote advised Secretary of State Hay of the general composition of the British delegation. Hay immediately advised McKinley.[60]

Over the next three weeks, Assistant Secretary of State David Jayne Hill and Republican political activist, international lawyer, and conference supporter Frederick William Holls worked hard to guide the president and Hay on the appointment of civilian members.[61] However, selection of the delegation's civilian members was not easy. Although Ambassador White had long been considered the logical choice to chair the delegation, he had to be convinced at the last moment not to decline.[62] Several individuals turned down the opportunity to be on the delegation or were

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[58] Ireland to McKinley, 6 Feb. 1899, series 1, reel 5, McKinley Papers.

[59] Hill to Holls, 3 Feb. 1899, Hill Papers; Hill to Holls, 9 Feb. 1899, ibid.; Holls to N. Murray Butler, 11 Feb. 1899, box 18, vol. 17, Holls/Columbia Papers.

[60] Hay to McKinley, 11 Mar. 1899, series 1, reel 6, McKinley Papers.

[61] See Hill to White, 7 Apr. 1899, box 86, reel 77, White Papers.

Hill was appointed assistant secretary of state in the fall of 1898 and held that post until 1903. He later served as US minister to Switzerland, The Netherlands and Luxembourg, and Germany. As minister to The Netherlands, he was a member of the US delegation to the 1907 Conference. He became an advocate for peace and international mediation and arbitration of disputes. See generally Aubrey Parkman, *David Jayne Hill and the Problem of World Peace* (Lewisburg, PA: Bucknell University Press, 1975), 9, 66-67, 72-75, 108-11, 115-16.

Holls was a Republican activist. He had successfully suggested eleven political appointments since McKinley had assumed office. See Holls, 'Visits to Washington, 1897-1900', 18 Jan. 1899, box 10, Holls/Columbia Papers. Theodore Roosevelt later described Holls as 'one of my staunchest friends and supporters' and 'one of my right hand men.' Roosevelt to Lodge, 8 Mar. 1900, Theodore Roosevelt Collection, bMS Am 1308 (293), Houghton Library, Harvard University, Cambridge, MA. Following Holls' sudden death in July 1903, Roosevelt described him as a 'valued friend', and his death as 'a grievous loss, not only to us, his friends, but to our people as a whole'. *In Memoriam Frederick William Holls* (n.p., 1904), 18-19.

[62] See White Diary, 4 April 1899, box 228, White Papers; Telegram, Holls to White, 4 April 1899, box 86, reel 77, ibid.; White to Fiske, 10 April 1899, box 86, reel 77, ibid.; Andrew D. White, *Autobiography of Andrew Dickson White* (New York: Century, 1922), II: 251.

rejected.[63] The two most interesting appointments, particularly in light of their later conflicts at and after the Conference, were Alfred Thayer Mahan and Frederick W. Holls.

Neither McKinley nor Hay appears to have carefully considered Mahan's appointment. One historian has argued Mahan was appointed because he was 'certain to act as a watchdog of American interests and take a hard-headed view of the proceedings with which by no stretch of anyone's imagination could he be considered in sympathy'.[64] But this is the logic of hindsight. In reality Mahan's selection and appointment was literally an afterthought. In an 18 March 1899, letter to McKinley that related only partially to the selection of the American delegation, Hay penned a postscript that stated in its entirety, 'Do you not think Mahan would be a good man to attend the conference on behalf of the navy?'[65]

Why was Mahan appointed? Several possibilities exist. Admiral George Dewey, the 'Hero of Manila Bay', was then in the Philippines and desperately wanted to return to the US.[66] Admiral William Sampson, who previously had been proposed to the president,[67] was embroiled in a dispute with Commodore Winfield Schley regarding his role in the Battle of Santiago during the Spanish-American War.[68] None of the Navy's leaders from the war with Spain therefore were possible selections. Given the care with which the other appointees were considered and selected, one reason for Mahan's selection may be that McKinley and Hay had no real alternative naval representative available.

Furthermore, the US Navy at that time was administratively decentralized and lacked a governing body such as the Board of Admiralty in Britain. Indeed, the uniformed naval leadership in the US was seeking greater autonomy and control

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[63] See Hay to McKinley, 18 Mar. 1899, reel 1, vol. 2, Hay Papers; Hay to Patton, 29 Mar. 1899, reel 1, vol. 2, ibid.

[64] Barbara Tuchman, *The Proud Tower* (New York: Bantam Books, 1966), 293-294.

[65] Hay to McKinley, 18 Mar. 1899, series 1, reel 6, McKinley Papers.

[66] Dewey to Long, 8 Mar. 1899, box 8, folder 1, letter 3, George Dewey Papers, MSS 18366, LCMD.

[67] Murray to McKinley, 16 Mar. 1899, container 19, Holls/Harvard Papers.

[68] Trask, *War with Spain*, 266-267, 485.

beyond the civilian Secretary of the Navy.[69] Secretary of the Navy John D. Long was notoriously disconnected from the operations of the Navy. He was not a supporter of naval expansion.[70] While Long was asked to assist in identifying a suitable civilian member of the delegation,[71] he was not involved in the selection of Mahan. To speak of Mahan as the Navy's delegate therefore is incorrect. Unlike Fisher, he was not really a *naval* delegate. Mahan had retired from the Navy in 1896 after more than forty years of service, having 'disliked virtually every minute of the experience',[72] and so had no uniformed superior to whom to report. Mahan had returned to active duty to serve on the Naval War Board for approximately four months during the Spanish-American War, an experience that did not change his lack of fondness for the US Navy.[73]

Mahan also may have been selected because of his prominence as the contemporary naval strategist of his time and the fact he was an Anglophile. At the same time, Hay and McKinley did not put much thought into Mahan's selection. Although recognized worldwide for his 1890 naval history, Mahan had no diplomatic experience.[74] His views were widely known to be antithetical to the goals of the conference. He opposed arms limitations, believing large armaments were necessary to deter war.[75] He thought efforts to reduce the horrors of war would only make war more likely.[76] Mahan also disagreed with the arbitration of international disputes. His opinions on this issue were formed at least by early 1896. In his view, arbitration

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[69] Dirk Bönker, *Militarism in a Global Age: Naval Ambitions in Germany and the United States before World War I* (Ithaca, NY: Cornell University Press, 2012), 175-176, 187-195.

[70] Henry J. Hendrix, *Theodore Roosevelt's Naval Diplomacy: The U.S. Navy and the Birth of the American Century* (Annapolis, MD: Naval Institute Press, 2009), 16.

[71] See Charles Choate to Long, 16 Mar. 1899, series 1, reel 6, McKinley Papers; Hay to McKinley, 18 Mar. 1899, ibid.

[72] Robert Seager II, *Alfred Thayer Mahan: The Man and His Letters* (Annapolis, MD: Naval Institute Press, 1977), 336.

[73] Ibid., 366-369, 399-400.

[74] Ibid., 408.

[75] See, for example, Mahan to Roosevelt, 6 May 1897, *LP/ATM,*II: 507.

[76] See, for example, Mahan to Roosevelt, 27 Dec. 1904, *LP/ATM,*III: 113.

was no substitute for being prepared for war.[77] Most importantly, as previously discussed, Mahan disagreed with a basic tenet of American foreign policy: the immunity of private property at sea during war. It seems unlikely that neither McKinley nor Hay were aware of Mahan's newspaper communications on the immunity of private property during the late fall of 1898. Moreover, Mahan had written Hay regarding the difficult peace treaty negotiations with Spain in early November 1898. Hay thanked him for the letter and encouraged him to provide his views 'as often as convenient to you.'[78]

While imperialists, neither McKinley nor Hay was generally opposed to limiting the consequences of war. They were in favour of international arbitration and worldwide adoption of the immunity of private property at sea. Hay told peace activist W.T. Stead that he was doing 'all in my power to bring about the realization of the beneficent projects of the Emperor of Russia'.[79] Thus, the United States hardly needed a 'watchdog of American interests' at the Conference. Prior to Hay suggesting Mahan as a possible appointment, McKinley had been considering the appointment of three ambassadors plus a fourth representative.[80] McKinley and Hay carefully vetted and ultimately rejected President Charles W. Eliot of Harvard University as an appointee, because his views did not align closely enough with those of the president.[81] Mahan was an internationally well-known alternative, but the president and secretary of state do not appear to have adequately considered Mahan's contrary views. His selection certainly was careless, and given his subsequent conduct at the conference, irresponsible.

When Hay asked Mahan if he would agree to be a member of the US delegation, his response was equivocal. Unlike Fisher, who had the 'reward' of command of the Mediterranean Fleet to look forward to once the conference was finished, Mahan had nothing to induce him to accept the appointment. He had no real interest in being a member of the United States' delegation to the so-called 'Peace

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[77] Mahan to Sterling, 13 Feb. 1896, *LP/ATM,*II: 445-446.

[78] Hay to Mahan, 9 Nov. 1898, reel 1, vol. 2, Hay Papers.

[79] Hay to Stead, 17 Jan. 1899, ibid.

[80] Charles Choate to Long, 16 Mar. 1899, series 1, reel 6, McKinley Papers.

[81] Ibid.; Hay to McKinley, 18 Mar. 1899, ibid.

Conference'. Since his retirement from the navy nearly three years earlier, he had embarked full speed on his literary career, building on the worldwide fame that *The Influence of Sea Power Upon History* had brought him.[82] In April 1899, he had a full plate of writing endeavours and was working hard to revise his book on the life of Lord Nelson.[83] Mahan sought guarantees the government would pay his expenses and provide remuneration. Hay assured him the Second Comptroller of the Treasury would pay.[84] Despite these assurances, Mahan asked to borrow money from his publisher to pay his expenses pending reimbursement.[85] Mahan accepted the appointment in spite of his concerns about being paid. He described his selection to the American delegation as 'wholly unexpected'.[86]

While Mahan may have been reluctant to accept the president's invitation, Holls actively lobbied for appointment as the delegation's secretary. In fact, the Republican activist pestered the president and others regarding his appointment as the delegation's secretary for months.[87] Ultimately, Holls convinced Ambassador White to request his appointment as secretary, in response to which Hay wrote the president, 'de gustibus non est disputandum'.[88] Likely because of Holls' incessant lobbying,

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[82] Seager, *Mahan*, 307.

[83] Mahan to Greene, 5 Apr. 1899, *LP/ATM,*II: 630; Mahan to Brown, 7 Apr. 1899, ibid., 631; Mahan to Brown, 15 Apr. 1899, ibid., 632.

[84] Hay to Mahan, 4 Apr. 1899, reel 1, vol. 2, Hay Papers. The US Comptroller previously had refused to pay Mahan's expenses incurred in April and May 1898 in returning to the US from Europe to join the Naval War Board during the Spanish-American War. See Draft Letter, Mahan to Comptroller of the Treasury, 18 Oct. 1898, *LP/ATM,*II: 601; Draft Letter, Mahan to Long, ca. 26 Oct. 1898, ibid., 607.

[85] Mahan to Brown, 16 Apr. 1899, ibid., 633.

[86] Ibid.

[87] See, for example, Holls, 'Visits to Washington, 1897-1900', 18 Jan. 1899, box 10, Holls/Columbia Papers; Holls to N. Murray Butler, 11 Feb. 1899, box 18, vol. 17, ibid.; Holls to Hill, 2 Mar. 1899, ibid.; Holls to McKinley, 21 Mar. 1899, ibid.; Holls to White, 9 Mar. 1899, box 86, reel 77, White Papers; Holls to Hill, 21 Mar. 1899, box 18, vol. 17, Holls/Columbia Papers.

[88] Hay to McKinley, 5 Apr. 1899, series 1, reel 6, McKinley Papers. (The Latin phrase means, 'In matters of taste, there is no argument.')

McKinley approved, telling Hay, 'At least we have got him [Holls] out of the country for a while.'[89]

McKinley ultimately appointed five men to serve as the United States' delegation. White led the delegation. Stanford Newel, the minister to The Netherlands, joined White. Seth Low, the president of Columbia University, was finally selected as the third civilian delegate.[90] The Army's representative was not Hay's first choice. In contrast to the selection of Mahan, Hay consulted with the Army's adjutant general about the appointment. After it was determined that the first candidate's selection would work a great inconvenience on him, Hay selected Captain (later Major General) William Crozier because he was 'one of the most accomplished officers in the army, acquainted with the very latest developments in the technical art of war, especially engineering, ordnance and armament of all sorts.'[91] Mahan was the other appointee.[92] Although appointed the commission's official secretary, Holls was to be accorded all the rights and privileges associated with being a delegate to the Conference.[93] Before the announcement of the US delegation, Hay confidentially told Pauncefote of the president's appointees.[94] Thus, the United States' delegation almost perfectly paralleled Britain's in its composition.

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[89] Hay to E. White, 29 May 1899, reel 1, vol. 2, Hay Papers.

[90] See Hay to Patton, 29 Mar. 1899, reel 1, vol. 2, Hay Papers; Hay to Low, 3 Apr. 1899, ibid. Low was known to the president, having previously lobbied successfully for the appointment of Joseph Choate as Hay's replacement as ambassador to Great Britain. See Low to McKinley, 21 Nov. 1898, series 1, reel 5, McKinley Papers.

[91] Hay to McKinley, 5 Apr. 1899, series 1, reel 6, McKinley Papers. McKinley had met Crozier at a dinner at the White House in January 1899. Crozier to McKinley, 12 Jan. 1899, series 3, reel 65, McKinley Papers.

[92] For a contemporary discussion and description of the members of the delegation, see W.T. Stead, 'Our Delegation to the Hague', *American Monthly Review of Reviews* 19, no. 5 (May 1899): 545-557.

Pauncefote sent Salisbury a copy of an article from the *New York Tribune*, which provided brief biographical sketches of the members of the delegation. See Pauncefote to Salisbury, 12 Apr. 1899, FO 83/1699.

[93] Hill to White, 17 Apr. 1899, box 86, reel 77, White Papers; Holls to Newel, 14 May 1899, container 364, 3-4, Holls/Harvard Papers.

[94] See Pauncefote to Hay, 5 Apr. 1899, reel 8, vol. 13, Hay Papers.

The Admiralty Plays Defence

Shortly after the unsuccessful secret offer to Russia and his determination of who the delegates to the conference would be, Prime Minister Salisbury received several petitions asking the government to reconsider its traditional opposition to the immunity of private property at sea. The chambers of commerce of Liverpool and Birmingham sent resolutions urging the adoption of an international agreement exempting 'all private property at sea from capture or destruction in time of war, unless contraband or seized in violating blockades.'[95] The Chamber of Shipping of the United Kingdom later sent a similar request, which also sought a 'clearer definition of the term "contraband of war".'[96]

The resolutions were forwarded to the Admiralty for comment. Goschen immediately recognized the risks such resolutions raised. He was concerned how the government might respond. After receiving Liverpool's resolution from the Foreign Office, he minuted that the issue of the immunity of private property at sea had to be 'carefully and elaborately' studied. 'There will be an increasing body of opinion in this country favourable to the view of the chamber of commerce, & I don't know what the view of the members of the Gov^{t} may be as they have not yet studied the question.'[97] The issue was forwarded to the Director of Naval Intelligence (DNI) for consideration.

Captain Reginald N. Custance had been appointed DNI in March 1899, a position he held until November 1902. He was the first in a series of DNIs who considered the implications of the laws of naval warfare vis-à-vis naval strategy. At the time of his appointment, Custance was well regarded for his intelligence in the naval community. He is now remembered primarily as an advocate of the study of war and as a vocal critic of the Admiralty in the last years of Fisher's administration as First Sea Lord. He was an advocate of Mahan's vision of sea power, but rather muddled and simplistic in his views and resistant to changes in naval technology and

[95] Barker to Salisbury, 23 Mar. 1899 (Chamber of Commerce of Liverpool), ADM 1/7422B; Goodman to Salisbury (Chamber of Commerce of Birmingham), 13 Apr. 1899, ibid.

[96] See Sanderson to Salisbury, 24 May 1899, FO 83/1700; Draft letter to Chamber of Shipping of the United Kingdom, 27 May 1899, ibid.

[97] Goschen, Minute, 11 Apr. 1899, ADM 1/7422B.

thinking.[98] Three days after receiving the Birmingham Chamber of Commerce's resolution, Custance, to whom Liverpool's resolution also had been forwarded, submitted a fourteen-page memorandum and attachments for consideration. He summarized the arguments in favour of Britain retaining its traditional opposition to the immunity of private property at sea. Custance began by stating:

> The fundamental principles which govern the capture of private property at sea are –
>
> (a) The sinews of war is wealth.
> (b) Wealth depends upon commerce.
> (c) The objectives in Naval war are –
>
> 1st. The fighting ships of the enemy which protect his wealth.
>
> 2nd. The wealth of the enemy itself, i.e., his commerce.

He noted that nations with a superior fleet historically had been able to protect their own trade and destroy that of the enemy. 'Therefore so long as [Britain] have a superior fleet it is to our interest to capture private property at sea.' Exempting private property at sea from capture would weaken all navies compared to that of land forces. Such weakening would be contrary to the interests of weaker powers who looked to Britain for 'protection against the military powers of the continent'. Furthermore, as the dominant naval power, Britain had always opposed the immunity principle. In this regard, Custance asserted that the Declaration of Paris 'was accepted without being properly considered'. He described how the government and Queen Victoria had agreed to the Declaration after less than three days' consideration, and that coupling agreement to the abolition of privateering 'was thought would balance the concession'. When the US refused to agree, Britain was left saddled with the Declaration. However, 'contraband of war' was liable to capture under the

[98] Matthew Allen, 'Rear Admiral Reginald Custance: Director of Naval Intelligence 1899-1902', *The Mariner's Mirror* 78, No. 1 (Feb. 1992): 61, 71-74; Andrew Lambert, 'Custance, Sir Reginald Neville (1847-1935)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/32687. See generally 'Barfleur' (pseudonym of Custance), *Naval Policy: A Plea for the Study of War* (Edinburgh: William Blackwood, 1907).

Declaration, and that was 'an elastic term. No agreement has ever been come to as to what is or is not contraband. The decision depends upon the relative strength of the belligerents and of neutrals, and upon the conditions at the moment.' He concluded his analysis by arguing that adoption of the immunity principle would 'remove one of the strongest influences inclining men toward peace.' Custance then interpreted 'contraband of war' more broadly than ever before, defining merchant ships themselves as contraband: 'If we are a belligerent, and private property at sea, except contraband of war, is exempt from capture, our shipping trade will not be saved, because ships can be used as instruments of war and must be treated as contraband, and therefore liable to capture.'[99] The Naval Prize Manual stated a neutral ship was subject to seizure only if 'fitted as a Vessel of War, and [it] is going for sale to a Hostile destination' or if caught violating a proper blockade. Mere carriage of contraband would not suffice for seizure.[100] Custance's comment is consistent with Admiralty fears of an adversary arming its merchant ships to wage a *guerre de course* against Britain.[101]

Custance also made his views regarding the persons who submitted the resolutions quite clear:

> My impression is that the people who forward these resolutions in favour of exempting private property at sea from capture are under a delusion. …
>
> Supremacy at sea has been won by the sword. The carrying trade of the world is the prize of victory. It is believed that it can only be retained by being ready to fight for it.[102]

First Naval Lord Richards had even stronger views regarding those pushing for a change in Britain's position on immunity of private property. He noted:

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[99] Custance, Memorandum, 22 Apr. 1899, ADM 1/7422B.

[100] Thomas E. Holland, *A Manual of Naval Prize Law* (London: HMSO, 1888), 24-25, 40.

[101] See Cobb (2013), 149-163; Seligmann (2012), 5-6.

[102] Custance, Minute, 22 Apr. 1899, ADM 1/7422B.

> The pusillanimous spirit in which certain chambers of commerce are in these latter days nibbling at the maritime power of their country is in strong contrast to the manly utterances of men like Mr. Cobden and John Stuart Mill.
>
> A war entered upon under the influence of such a spirit as is indicated in these resolutions would be foredoomed to ignominious failure.[103]

After reviewing Custance's analysis, Goschen thought there was a stronger argument against the immunity principle. If adopted, the principle would eliminate one of the strongest arguments in favour of 'an efficient and sufficient fleet of cruisers. The "protection of our trade" carries our [naval] estimates.' Given his background in banking and finance, Goschen well understood the potential implications – and benefits to naval estimates – from this asserted risk to British trade. Without those reasons, the Admiralty's building program would be reduced with disastrous consequences when war came. Much as Custance had broadly defined 'contraband', Goschen did so as well, although not quite as far. Goschen stated, 'All provisions would be declared contraband of war', which would mean all private property could be captured after all, and the Royal Navy would 'be without the power of effectively protecting it.'[104] Opposition to the immunity of private property at sea therefore was necessary to justify the Admiralty's increasing naval expenditures and ship building program, especially for cruisers to protect its maritime trade during war.

Regarding the government's official stand on the immunity issue, the Admiralty need not have worried. Salisbury 'was prima facie opposed to the idea of immunity'.[105] Salisbury was too much the politician to make his view clear to proponents of the principle, however. The draft response to the Chamber of Shipping was 'somewhat evasive', although it accurately told the Chamber that the topic of the

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[103] Richards to Goschen, 30 Apr. 1899, ibid. For a discussion of the views of Richard Cobden and John Stuart Mill on the Declaration of Paris and the immunity of private property at sea principle, see generally Semmel (1986), 56-83.

[104] Goschen, Minute, 14 May 1899, ADM 1/7422B. Goschen's undoubtedly flowed from France's declaration of food as contraband in 1885 in its war with China. See Lemnitzer (2014), 185.

[105] Sanderson to Salisbury, 24 May 1899, FO 83/1700 (emphasis in original).

immunity of private property at sea was not mentioned in the Tsar's list of topics for the conference 'and that its discussion must depend on a joint agreement of the plenipotentiaries to include it in their deliberations.'[106] The British government would not allow that topic to be raised.

After setting forth the arguments against the principle of the immunity of private property at sea, Custance prepared a response to the Foreign Office's January request for the Admiralty's observations on the topics proposed by the Tsar. However, the Foreign Office had little interest in assisting him. On 4 May, Custance asked for copies of dispatches relating to the Geneva Convention of 1864 to assist in the preparation of the Admiralty's 'observations'.[107] The Foreign Office's response was remarkable, and suggests the tensions that existed within the government regarding the upcoming conference. The Foreign Office responded that it was

> directed by the Marquess of Salisbury to inform you [Custance] that the Correspondence in question … is bound in two volumes which cannot be conveniently spared from this Office.
>
> If, however, you will depute a gentleman to come and examine them at this Office, the Librarian and Keeper of the papers will be happy to shew them to him any day between the hours of 12 and 5 P.M.[108]

Custance never obtained the documents. Nevertheless, he prepared a nine-page memorandum on the topics to be addressed at the conference, along with a first draft response to the Foreign Office's request for observations 'if it is considered desirable to send one.'[109] He included four pages of estimates of the number of naval personnel, ships being built, and expenditures for the navies of Britain, France, and Russia with his memorandum.[110] Custance's analysis was a multi-page attack on

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[106] Sanderson to Salisbury, 25 May 1899, ibid.; Draft letter to Chamber of Shipping of the United Kingdom, 27 May 1899, ibid.

[107] Custance to Foreign Office, Draft letter, 2 May 1899, f.17, ADM 116/98; Foreign Office to Secretary to the Admiralty, 10 May 1899, ff. 18-19, ibid.

[108] Foreign Office to Secretary to the Admiralty, 10 May 1899, ff. 18-19, ibid.

[109] Custance, Minute, 10 May 1899, ff. 20, 23-31, 36-37, ibid.

[110] Custance, Estimates, 10 May 1899, ff. 32-35, ibid.

every object and nearly every proposed topic for the conference. His initial remarks rejected any suggestion of disarmament or limitation of naval budgets or restriction on new armaments. He thought disarmament impossible without some international force to ensure compliance.[111] Custance asserted that

> no proposal restricting the power of the British Fleet can be entertained which does not at the same time limit that of the Fleets of Japan, United States and all other Navies. Further the strength of the British Fleet depends upon that of Foreign armies and not alone upon that of Foreign navies. It was the stringency of the Blockade instituted by the British Fleet which eventually wore out and broke down the armies of Napoleonic France when no other Navies existed.[112]

Custance similarly thought the Tsar's proposal to prohibit the use of new firearms and explosives was ludicrous. He ascribed the critical factor as not the implements of war, but the 'courage, discipline, and experience' of the men who comprised the forces in conflict. 'Veterans will stand more punishment than conscripts.'[113]

However, one agenda item did gain his favour: the proposal to outlaw submarines and 'other similar engines of destruction'. With regard to this topic, Custance wrote:

> The submarine boat is the arm of the weaker navy. It would be to our interest to prohibit it, as well as mines and torpedoes of all kinds, because the efficiency of our blockades would be much increased. The fact is that the advantage which the superior Navy gained by the use of

[111] Custance, Memorandum, 10 May 1899, f. 23, ibid. The genesis of Custance's argument in this regard came from an article published in the *Fortnightly Review*. See Diplomaticus, 'The Vanishing of Universal Peace', *Fortnightly Review* 65, no. 389 (May 1899): 871-880. Custance hand-copied excerpts from the article. See ADM 116/98, ff. 13-16. Authored by Lucien Wolf, a Jewish journalist and foreign editor of the *Daily Graphic* who wrote under the pseudonym 'Diplomaticus', the article was an assault on the idea that anything useful would come from the proposed conference.

[112] Custance, Memorandum, 10 May 1899, f. 24, ADM 116/98.

[113] Ibid., f. 25.

> steam has been counterbalanced by what it has lost through the introduction of mines and torpedoes.[114]

The 'weaker navy' certainly included France and Russia, Britain's likely opponents, which were the only foreign navies for which Custance prepared detailed estimates as part of his analysis. Thus, in Custance's view, the laws of naval warfare could and should be used to improve the Royal Navy's position against potential enemies.

Custance opposed every aspect of the proposals to adapt the Geneva Convention of 1868 to naval warfare. He quoted extensively from various sources regarding the government's position at the Brussels Conference of 1874, at which Britain's delegate was instructed to 'not entertain in any shape, directly or indirectly, anything relating to Maritime operations or Naval Warfare.'[115] Custance thought a similar injunction should be imposed upon Britain's delegates to the 1899 Conference. Finally, on the topic of the arbitration of international disputes, no response was necessary from the Admiralty.[116]

Custance reduced his views to a two-page draft response to the Foreign Office. His draft declared that those proposals seeking to limit naval forces were 'quite impracticable'. Regarding proposals to limit improvements in weapons and explosives, Custance suggested the Admiralty's position should be 'that any such restrictions would favour the interests of savage nations, and be against those of the more highly civilized. It would be a retrograde step.' Which 'savage nations' the Royal Navy might face were not identified. The draft response did not mention support for the proposed prohibition on submarines, mines, and torpedoes. Regarding the proposal to adapt the Geneva Convention of 1864 to naval warfare, Custance stated the Admiralty should be 'averse to binding this country in this manner, as such an arrangement would be liable to lead to mutual recriminations, they would prefer to leave this question to the unwritten usages of warfare, and to the humanity of the combatants.' He further recommended that any discussion of naval or maritime operations in the context of an international agreement should be precluded, as had

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[114] Ibid., f. 26.

[115] Ibid., f. 28 (emphasis in original).

[116] Ibid., f. 31.

occurred with the 1874 Brussels Conference. Finally, Custance averred that the proposal regarding international arbitration did not merit any response by the Admiralty.[117]

The day after Custance submitted his analysis and draft response, Goschen again sought guidance from Salisbury regarding the latter's intentions for the upcoming conference. Goschen asked Salisbury if he intended to provide any instructions to the delegation, '& if so, are they to bring disarm [*sic*] up?' Goschen also asked if there should be a meeting regarding any instructions. Finally, he surmised, 'Of course, the primary instruction will be: Initiate nothing, & let the other Powers make the first move. I should in any case like to leave Pauncefote as to some of the questions outside of reduction of armaments which are sure to arise.'[118]

Goschen did not receive a satisfactory answer from Salisbury because he prepared a lengthy handwritten minute on Custance's analysis. While Richards had quickly approved Custance's memorandum and proposed response,[119] Goschen carefully reviewed it. He agreed 'with most of the remarks but not with all.' Goschen thought there should be several modifications. The impracticalities associated with limiting new weapons and explosives should be a recurring theme in the response to the Foreign Office. Goschen noted the draft response dealt with men and ships but not budgets. He was concerned some agreement regarding naval expenditures, especially compared with Russia and France, might be suggested. However, a strong argument against any reduction in naval budgets could be made because of the difficulties in monitoring any such agreement. He suggested adding a paragraph on budgets to the draft response. Finally, he thought Custance's next-to-last paragraph, dealing with proposed application of the laws of war to naval warfare needed strengthening. He recognized that 'acceptance of the [Tsar's] programme by the British Gov^{t} implies that this country is prepared to consider questions affecting the Navy which were excluded by the British Gov^{t} in 1874.' But he hoped the delegation at least would be instructed not to enter into any binding agreements

[117] Custance, Draft Response to Foreign Office, 10 May 1899, ff. 36-37, ibid.

[118] Goschen to Salisbury, 11 May 1899, G. Goschen correspondence, 1899-1900, ff. 11-12, Salisbury Papers.

[119] Richards, Minute, 13 May 1899, f. 20, ADM 116/98.

without first gaining approval from the government.[120] Goschen's experience in March with the secret proposal to Russia likely influenced his views regarding any possible agreement on naval expenditures, as well as his concern of agreements being reached without government approval.

Custance and Goschen to discuss the First Lord's comments, after which Custance presented a second draft response to the Foreign Office.[121] This draft recognized that issues and topics which the Admiralty preferred not to have raised at the conference would in fact be discussed. It therefore sought to present practical barriers to any possible agreements. An explanation of the need for safeguards if any reduction in naval budgets was agreed was inserted. Another new paragraph expressed the view that any limitations on new explosives would require disclosure of current formulations, secrets that the Admiralty assumed the Great Powers would not willingly share. The second draft continued to assert that any restriction on new weapons 'would favour the interests of savage nations, and be against those of the more highly civilized.' Once again, no mention was made of banning submarines, mines, and torpedoes. The Admiralty opposed any adaptation of the 1864 Geneva Convention to naval warfare, contending, 'such an arrangement would be almost certain to lead to mutual recriminations.' The Admiralty now recognized 'it would appear that the acceptance of the programme of the Russian Government implies that H.M. Government is prepared to consider' questions relating to maritime operations and naval warfare. However, the Admiralty 'assumed' the delegation would be instructed not to enter into to any agreements without asking the government first.[122] Goschen added a sentence to Custance's second draft, stating that the delegation should pay attention to any effect an agreement on international mediation and arbitration of disputes might have on 'permissible and prohibited naval and military movements during the period of mediation.'[123] The Admiralty finally sent its formal

[120] Goschen, Minute, 14 May 1899, f. 21, ibid.

[121] Goschen to DNI, 14 May 1899, f. 22, ibid.; Custance, Minute, 15 May 1899, f. 38, ibid.

[122] Custance, Draft B Response to Foreign Office, 15 May 1899, ff. 39, 41, ibid..

[123] Ibid.; Goschen, Insert to Draft B, 15 May 1899, f. 40, ibid.

response to the Foreign Office's demand for 'observations' on the Tsar's proposed topics for the conference on 16 May, nearly five months after it was requested.[124]

The Instructions to the Delegations

While Custance was preparing responses to the petitions from chambers of commerce relating to the immunity of private property at sea, Secretary of State Hay asked Assistant Secretary of State David Jayne Hill to draft the instructions for the US delegation. By 7 April, Hill had essentially completed the instructions.[125] There is no evidence Hay or President McKinley changed Hill's draft instructions.[126] No record exists that the instructions to the delegation were vetted with Secretary of the Navy Long or any uniformed or former member of the Navy (or any person from the Army). Indeed, other than perhaps verbal discussions within the Department of State, the instructions were, as predicted by Hill, adopted essentially unaltered.

The formal instructions represent an effort by the US to walk a fine line between maintaining the country's traditional position against involvement in European affairs while also proposing a far-reaching plan for an international tribunal for the peaceful resolution of disputes between nations.[127] In effect, the US wanted to become more involved in international affairs on certain issues but otherwise maintain its relative isolation. The instructions were clear and generally favourable toward the navy concerning the proposals directed toward disarmament and arms limitations. Regarding the proposal to reduce military forces and budgets, Hay instructed the delegates that the United States' military expenditures were 'at present so far below the normal quota that the question of limitation could not be profitably discussed.'

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[124] MacGregor to Sanderson, 16 May 1899, FO 83/1700; Admiralty to Foreign Office, 16 May 1899, FO 412/65, 69.

[125] Hill to White, 7 Apr. 1899, box 86, reel 77, White Papers.

[126] See also Parkman, *David Jayne Hill*, 74.

[127] See generally, Letter of Instruction and Annex B, 18 Apr. 1899, box 1, call number A/+N543, Stanford Newel Papers, Minnesota Historical Society Manuscript Collection, Minnesota Historical Society, St. Paul, MN; Hay to White, *et al.*, 18 Apr. 1899, *FRUS* 1899, 511-513; James Brown Scott, ed., *Instructions to the American Delegates to the Hague Peace Conferences and their Official Reports* (New York: Oxford University Press, 1916), 6-16.

The delegates thus were to leave any discussions on that topic to 'the representatives of those Powers to which it may properly belong.'[128]

Regarding the topics to outlaw certain weapons in land or naval warfare – the second, third, and fourth articles in the Russian circular – Hay 'enjoined [the delegates] not to give the weight of their influence to the promotion of projects the realization of which is so uncertain.' However, Russia's fifth, sixth, and seventh agenda points relating to revising the laws of war and extending them to naval warfare were to be backed by the American delegates, 'and any practicable propositions based upon them should receive [the delegation's] earnest support.' Hay directed the delegation to promote the eighth article, relating to mediation and arbitration of international disputes. Indeed, the instructions included a draft proposal for an international court of arbitration.[129]

Finally, Hay told the delegates that because

> the Conference has its chief reason of existence in the heavy burdens and cruel waste of war, which nowhere affect innocent private persons more severely or unjustly than in the damage done to peaceable trade and commerce, especially at sea, the question of exempting private property from destruction or capture on the high seas would seem to be a timely one for consideration.[130]

In light of the United States' long-standing position in favour of the principle, the delegates were to 'propose to the Conference the principle of extending to strictly private property at sea the immunity from destruction or capture by belligerent Powers which such property already enjoys on land as worthy of being incorporated in the permanent law of civilized nations.'[131] This position, which Pauncefote may

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[128] Scott, ed., *Instructions*, 7. William E. Dodge, Jr., a Republican political supporter, previously told Hay there was 'an absolute necessity' for the US to increase its army and navy and therefore, the country 'had better be modest and keep quiet' at the conference. Dodge to Hay, 6 Mar. 1899, reel 11, vol. 18, Hay Papers.

[129] Scott, ed., *Instructions*, 8-9, 14-16.

[130] Ibid., 9.

[131] Ibid.

have warned Hay against asserting before leaving Washington for London,[132] would bedevil relations between the two countries at both the 1899 and 1907 conferences.

Neither McKinley nor Hay nor Hill held any meetings with the US delegates as a whole regarding these instructions or their import. The omnipresent Holls may have spoken with Hay and Hill regarding the instructions on 17 April.[133] No record exists that any of the delegates asked any questions regarding the instructions or the positions they were to take. Certainly no evidence exists of any consideration of the impact of the instructions on naval strategy. Indeed, ten days after the instructions were issued, Mahan said he did not know what the government wanted him to do at The Hague.[134] Still, the delegation had received specific instructions regarding the positions it was to take.

In contrast, Salisbury's instructions were delivered on 16 May 1899, the day Pauncefote, Fisher, and Ardagh left for The Hague.[135] No preliminary drafts of the instructions have been identified, and no evidence exists they were vetted in advance with the Admiralty or War Office. Unlike Hay's instructions, which were directed to all members of the American delegation, Salisbury's instructions were only addressed to Pauncefote. In general, the instructions expressed no definite views regarding seven of the eight topics. Salisbury noted the British government had 'willingly accepted' the proviso in Muraviev's note of 11 January, that 'all questions not directly included in the Programme of the Conference should be excluded from its deliberations'. The instructions then pointed out that Britain had agreed to the two general objects for the conference as described by Muraviev. Salisbury informed

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[132] See Sanderson to Salisbury, 24 May 1899, FO 83/1700.

[133] Holls, 'Reminiscenses [*sic*] of the Peace Conference at The Hague, 1899', container 364 at 1, Holls/Harvard Papers (stating Holls 'received detailed instructions from Secretary Hay and Assistant Secretary David J. Hill' on April 17). The author discovered this document at the bottom of the last box of Holls' papers, labeled 'Miscellaneous', at Harvard University. To the best of the author's knowledge, no researcher has previously referenced it in any published work. Holls prepared this lengthy description of his experiences relating to the 1899 Conference sometime after its conclusion.

[134] Mahan to Rhodes, 28 Apr. 1899, *LP/ATM,*II: 633.

[135] See Pauncefote to Salisbury, 17 May 1899, FO 412/65, 71 (informing Salisbury of the arrival of the delegation on the morning of 17 May, except Sir Henry Howard, who was already in The Netherlands).

Pauncefote the government had abstained from expressing any definite opinion on the eight points set forth in the 11 January note, other than support for the mediation and arbitration of international disputes.[136]

The actual instructions provided to Pauncefote then diverge from the instructions as later published and presented to the House of Commons. The published instructions next state: 'Until the Conference has met and the order of discussion has been in some degree settled, it seems scarcely possible to give you and Sir H. Howard any detailed instructions on those points of the Programme which concern the question of disarmament.'[137] However, in the actual instructions, Salisbury first told Pauncefote he had provided him with a copy of his earlier correspondence to Sir Charles Scott, in which Salisbury had made some preliminary observations regarding disarmament. In that correspondence, Salisbury had expressed the need for clear definitions of which armaments or military actions were to be prohibited, the viability and enforceability of any agreements limiting or restricting military expenditures or particular weapons of warfare, and the need for agreement on some oversight organization to monitor and enforce any such agreements *before* any specifics were considered.[138] Salisbury had no way of knowing if the various topics relating to disarmament or arms limitations 'will retain at the Conference the position of primary importance which at first seemed to be assigned to it.' 'Until, therefore, the Conference has met and the order of discussion has been in some degree settled, it seems scarcely possible to give you and Sir H. Howard any more detailed instructions.' Salisbury also provided Pauncefote copies of memoranda from the War Office and the Admiralty 'containing information and suggestions on these topics, which will be of assistance to you and to the Military and Naval Delegates on whom the task of debating them will largely rest.'[139] The published and confidential

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[136] Salisbury to Pauncefote, 16 May 1899, ibid., 70. See Salisbury to Scott, 14 Feb. 1899, ibid., 30.

[137] Salisbury to Pauncefote, 16 May 1899, in *Correspondence Respecting 1899 Conference*, 9.

[138] Salisbury to Scott, 14 Feb. 1899, FO 412/65, 30-31.

[139] Salisbury to Pauncefote, 16 May 1899, ibid., 70. In contrast to the Admiralty's 'observations', which cover a single page in the printed confidential volume relating to the 1899 Conference, the War Office's views covered more than twenty-five

instructions then return to the one topic on which the delegation was given definite instructions: the mediation and arbitration of international disputes for the prevention of war. Regarding that topic, the delegation was told 'it was a matter to which Her Majesty's Government attach the highest importance, and which they are desirous of furthering by every means in their power.'[140] The instructions concluded by telling Pauncefote to keep the government constantly informed as to the proceedings of the conference.[141] The Admiralty was not provided with copies of the instructions or any of the documents supplied to the British delegation. It had to request copies from the Foreign Office a week after the conference convened, after reading about the documents in an article in *The Times*.[142]

Why were Britain's instructions redacted when published in October 1899 for the House of Commons? As is now known, Salisbury had previously made a secret proposal to reduce naval expenditures directly to Russia. Removing any discussion regarding disarmament or arms limitations in the instructions preserved that secrecy. Moreover, by withholding any reference to his and the Admiralty's views on seven of the eight topics, Salisbury ensured that any divergence between his views and those of the Admiralty compared with the actual results of the conference could not be readily ascertained. Indeed, the 1899 Conference resulted in more future implications for naval warfare than either Salisbury or the Admiralty anticipated.

Conclusion

The United States and Great Britain took seriously their preparations for the 1899 Conference. The US Navy played no role in the selection of the American delegation or the preparation of the instructions. Two politically motivated individuals directed the selection of the US delegation's civilian members, which paralleled the composition of Britain's. The selection of Mahan, which neither McKinley nor Hay adequately considered, would have significant implications once the 1899 Conference convened. Despite the lack of involvement of the Navy, the

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printed pages, including multiple appendices. See War Office to Foreign Office, 17 May 1899, ibid., 79-106.

[140] Salisbury to Pauncefote, 16 May 1899, ibid., 70.

[141] Ibid., 71.

[142] Admiralty to Foreign Office, 25 May 1899, f. 51, ADM 116/98

instructions to the delegation were generally favourable with one exception: the insistence on international recognition of the principle of the immunity of private property at sea.

For the Admiralty and Royal Navy, Britain's preparations for the 1899 Conference must have verged on a nightmare. The divergent views between the government and the Admiralty show increasing tensions. After ridiculing the Tsar's proposed topics for the conference in January 1899 and assuming the government would not seriously consider them, Goschen participated in a secret proposal to reduce naval expenditures to Russia. Salisbury's decision to make such a proposal not only reveals the financial pressures caused by the naval arms race, but also the seriousness with which the proposed conference was viewed. The traditional story that Salisbury picked Fisher as Britain's naval delegate without the involvement of Goschen is wrong. Fisher was identified as the best man for the job, and his inducement to accept was the reward of the Royal Navy's most important command. He was not selected as someone who would 'fight at the Peace Conference … though it was not for Peace'.[143] Indeed, his positions at the conference would be fair less radical than those of Mahan.

The Admiralty was forced to consider the ramifications of the topics for consideration at the conference. Again, the Admiralty's actions undercut suggestions that the laws of naval warfare were something it believed could be ignored or disregarded. Once adopted, any limitations or restrictions would have to be followed unless the enemy violated them first, and that could not be guaranteed. Certainly, in planning for war, the Royal Navy could not assume that any rules would not apply or that the government would allow, for example, the development of banned weapon systems. Fortunately, the Admiralty's views regarding the immunity of private property coincided with Salisbury's. The Admiralty recognized that by agreeing to attend, Britain had agreed to consider limitations and restrictions on naval warfare. While it argued against almost all of the proposed topics, the Royal Navy supported an international agreement banning submarines, mines, and torpedoes. If it could frame the rules to suit and protect its position as the world's leading naval power, it would do so. In the end, the instructions to the British delegation generally allowed

[143] Fisher, *Records*, 55.

maximum freedom of action. Throughout the 1899 Conference, the Admiralty would closely monitor the proceedings and defend its pro-belligerent positions regarding the laws of naval warfare. In this defence, it found a ready ally in Alfred Thayer Mahan.

Chapter 4

'Interesting in a way'? Fisher, Mahan, and the 1899 Conference

The 1899 Conference began with no one expecting anything of consequence to come out of it. A newspaper correspondent described the atmosphere as 'one of frigid reserve, not to say mutual mistrust.'[1] Andrew White, head of the US delegation later wrote, '[S]ince the world began, never has so large a body come together in a spirit of more hopeless skepticism as to any good result.' Some senior European delegates despaired of the adverse impact of the conference on their otherwise unblemished careers.[2] For naval warfare, however, the 1899 Conference was hardly a failure. It set the stage for discussions regarding the laws naval of warfare for the following ten years.

This chapter first discusses plans for cooperation between Great Britain and the United States. It then studies the debates and discussions at the conference on the various topics of the Tsar's agenda related to naval warfare, focusing on the positions of Britain and the US. The aftermath of the conference is then reviewed, including an unprecedented solicitation from Mahan to the British government to cooperate in opposing the US and its traditional support for the immunity of private property at sea. Finally, this chapter re-evaluates the traditional assessments of the roles of Fisher and Mahan at the conference and the impact on their views of the laws of naval warfare.

Plans for Cooperation

Mahan, Seth Low, and Frederick Holls had arrived in England on the evening of 10 May after a weeklong voyage. Crozier had preceded them by two weeks;

[1] Special Correspondent, 'Close of the Peace Conference', *The Times* (London), 31 July 1899, p. 5, col. 2. See also Editorial, 'The Peace Conference at The Hague Was Formally Opened Yesterday', *The Times* (London), 19 May 1899, p. 9, col. 3.

[2] Andrew D. White, *The Autobiography of Andrew Dickson White* (New York: Century, 1922), II: 256.

Newel and White were still at their embassies in The Hague and Berlin, respectively. Pauncefote was already in England, having left his post in the US earlier.[3] The day after his arrival, Holls met with Balfour at the latter's offices on Downing Street. At the meeting, Holls talked about his plan, approved by President McKinley, to have Great Britain, Germany, and the US act jointly at the upcoming conference. Balfour arranged for Holls to meet with Lord Salisbury the next day. After meeting with Balfour, Holls met with Pauncefote and also discussed cooperation at the conference.[4]

Holls then travelled to Berlin and met with Ambassador White and Bernhard von Bülow, the secretary of state for foreign affairs of the German Empire. They discussed cooperation at the conference between England, the US, and Germany.[5] Before White and Holls left for The Hague, Bülow promised that Germany's delegation would cooperate fully with the US.[6] After Holls' meetings in Berlin, it seemed as though the three nations would cooperate on all subjects for the conference.

Mahan was not idle during his time in London. He met with First Lord Goschen at the Admiralty. Goschen told Mahan of the secret proposal for naval disarmament that had been made to Russia. Mahan wrote weeks after the conference, 'The one [nation] most generally abused, Great Britain, did offer to stop two battle ships, if Russia would do the same; but the latter took no notice of the proposal. This I was told by the first Lord of the Admiralty himself.'[7] No evidence has been found that Fisher was present at the meeting between Goschen and Mahan. It seems unlikely he was there because Fisher never mentioned the specific terms of the secret naval disarmament proposal made to Russia. However, given Mahan's subsequent conduct and cooperation with Fisher on various positions at the conference, the two likely discussed some degree of collaboration at some time. Certainly, Mahan's

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[3] Holls, 'Reminiscenses [*sic*] of the Peace Conference at The Hague, 1899', container 364, 1-1a, Holls/Harvard Papers.

[4] Ibid., 1a-2.

[5] Ibid., 2-4.

[6] White, *Autobiography*, II: 259.

[7] Mahan to Brown, 23 Sept. 1899, *LP/ATM,*II: 658. The proposal to drop construction of two British battleships was not disclosed in Goschen's speech to the House of Commons. That fact therefore could indeed only have come from Goschen.

positions at the conference did not align with the instructions he had received from the US government. Fisher undoubtedly met with Goschen and discussed the Admiralty's positions as expressed in its 'observations' of 16 May given the nearly identical language Fisher later used during the conference.[8] Thus, while the civilian delegates of Great Britain and the US planned one form of cooperation for particular purposes, the naval delegates of the two nations may have planned cooperation with other goals in mind.

The Conference and Naval Warfare: Successes, Failures, and Postponements

On 18 May 1899, the delegates from 26 countries convened the conference.[9] The conference divided its work into three 'commissions'. The First Commission was devoted to the items on the Russian agenda relating to limiting armaments and certain types of weapons, the Second Commission to revising the laws of land war and extending them to naval warfare, and the Third Commission to devising a peaceful means for the resolution of international disputes. Mahan was a member of the First and Second Commissions, including the sub-commission of the First Commission relating to naval affairs.[10] Fisher served on the same bodies.[11] Unlike Mahan, who was a 'plenipotentiary' and therefore could cast votes on behalf of the

[8] Compare Admiralty to Foreign Office, 16 May 1899, FO 412/65, 69 with à Court, Memorandum, 26 May 1899, FO 83/104.

Salisbury added Lt. Col. Charles à Court (later à Court Repington) to the British delegation as an assistant military delegate after the conference started, and informed à Court of his appointment on 23 May. See Salisbury to à Court, 23 May 1899, ibid. (list of communications and subjects at end of the file). Why Salisbury made this late addition to the delegation is not clear. However, à Court provided detailed handwritten memoranda regarding the proceedings to the Foreign Office throughout the conference. See, for example, 'Memoranda by Lieut. Colonel C. À Court, Military Attaché', ibid. Other handwritten memoranda from à Court are in FO 83/1700. Salisbury may have intended à Court to be his 'eyes and ears' at the conference.

[9] See James Brown Scott, ed., *The Proceedings of the Hague Peace Conferences: The Conference of 1899* (New York: Oxford University Press, 1920), 9.

[10] James Brown Scott, ed., *Instructions to the American Delegates to the Hague Peace Conferences and their Official Reports* (New York: Oxford University Press, 1916), 18; Scott, ed., *1899 Conference*, 9, 23, 24.

[11] See Inclosure, Pauncefote to Salisbury, 25 May 1899, in Foreign Office, *Correspondence Respecting the Peace Conference Held at The Hague in 1899* (Miscellaneous No. 1 (1899)) (London: HMSO, 1899), 16-17; Pauncefote to Salisbury, 17 June 1899, FO 412/65, 165.

US, Fisher was a 'technical delegate' and could only advise Britain's two plenipotentiaries, Pauncefote and Howard.[12] Relatively soon, Fisher reported, 'It's very hard work here. It's a case of *Britannia contra mundum*! But we are more than holding our own.'[13] A few weeks later, Crozier expressed a similar view, saying 'the work has been continuous and exacting without being awfully interesting. Mahan and I have had little or no constructive work…. Sentinel duty is fatiguing.'[14]

In the First Commission, Fisher argued in favour of banning submarine boats and the construction of new ships equipped with rams if all nations agreed. He obtained the support of a majority of delegates, including Germany and Russia.[15] The Admiralty entirely approved of this effort.[16] Mahan quickly ignored his government's instructions 'not to give the weight of their influence' on issues relating to limitations or restrictions on various weapons and armaments. He wanted to 'preserve full liberty for his Government to use submarine torpedo boats or not'.[17] With the US and France leading the opposition, the proposals failed for want of unanimity.[18] On efforts to limit the on-going arms race, Mahan announced (consistent with his instructions) that this issue was purely a European one on which the US would express no opinion.[19] Nevertheless, Mahan argued against any efforts to outlaw new types of cannon or limit improvements in armour plate.[20] Fisher asserted that any limitations on the development or type of weapons that might be used in war 'would place civilized peoples in a dangerous situation in case of war with less civilized

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[12] See James Brown Scott, *The Hague Peace Conferences of 1899 and 1907* (Baltimore, MD: The Johns Hopkins Press, 1909), I: 113; Scott, ed., *1899 Conference*, 2, 3.

[13] Fisher to Fawkes, 4 June 1899, *FGDN* I, 141.

[14] Crozier to Corbin, 19 July 1899, reel 11, vol. 18, Hay Papers.

[15] Scott, ed., *1899 Conference*, 367-368; Fisher Memorandum, Inclosure 1 to Pauncefote to Salisbury, 31 May 1899, FO 412/65, 120.

[16] Custance, Minute, 2 June 1899, ADM 116/98.

[17] Scott, ed., *1899 Conference*, 367

[18] Ibid., 367-369; Fisher, Memorandum, Inclosure 1 to Pauncefote to Salisbury, 31 May 1899, FO 412/65, 120.

[19] Scott, ed., *1899 Conference*, 327.

[20] Ibid., 292-295, 367-368.

nations or savage tribes.'[21] He did not explain more precisely how that danger might arise. Fisher noted that if new weapons and explosives were prohibited, nations would have to disclose their present designs and compositions, which no country would do.[22] Mahan even crossed over to an issue being debated by the subcommittee devoted to land warfare issues, and convinced Crozier to successfully propose outlawing the dropping of explosives from balloons for a period of five years instead of the unlimited period originally adopted.[23]

Mahan became notorious for his opposition to banning the use of projectiles whose sole purpose was to spread asphyxiating or deleterious gases. On behalf of the US, he cast the only negative vote before the sub-commission considering the declaration. He asserted that any such ban was premature, because no such shells presently existed. He argued that, 'from a humane standpoint it is no more cruel to asphyxiate one's enemies by means of deleterious gases than with water, that is to say, by drowning them, as happens when a vessel is sunk by the torpedo of a torpedo-boat.'[24] He adamantly refused to reconsider his position throughout the debates on the proposed prohibition, saying it was 'a question of principle'.[25]

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[21] Ibid., 360.

[22] Ibid., 360-361.

[23] Ibid., 280-281, 353-355.

[24] Ibid., 283, 366.

[25] Ibid., 328. See also ibid., 283-284, 296, 366-367.

Mahan's first two biographers reached radically different conclusions regarding his opposition to banning poison gas shells. His first biographer, writing two years after the end of the First World War said, 'in light of the information which has come to us of the inhuman character of these gases and of the horrible sufferings which the use of them entails, [Mahan] would have been the last man to advocate their employment.' Charles Carlisle Taylor, *The Life of Admiral Mahan* (London: John Murray, 1920), 96. Mahan's second biographer, writing on the eve of the Second World War, took a different tack. He concluded, 'Later studies and careful analyses have shown that gas measured by the degree of suffering inflicted … by the permanent after effects on the wounded, and the percentage of deaths to the total number of injured, is a comparatively merciful weapon, thus justifying Mahan's opinion that gas was not "unnecessarily cruel."' W.D. Puleston, *Mahan: The Life and Work of Captain Alfred Thayer Mahan*, (New Haven, CT: Yale University Press, 1939), 208.

In contrast, Fisher originally voted to ban poison gas projectiles in the sub-commission. He thought it unlikely such a weapon would ever be developed.[26] However, he soon learned diplomacy often involves a *quid pro quo*. Another sub-commission had proposed and passed a declaration banning bullets that flatten or expand inside the human body. This proposal was directed against Britain's use of the 'dum-dum' bullet. Only Britain had opposed the declaration before the sub-commission.[27] When the proposed ban on poison gas shells came before the full conference committee, Fisher voted against it in order to gain America's support and vote against the declaration to ban 'dum-dum' bullets.[28] The press understood a deal had been struck between the American and British delegates. One Russian stated, '[T]he English and American do good business. The English to-day pay the debt in asphyxiating shells which they incurred to the Americans for their support of the Dum Dum bullet.'[29]

On 5 June, Fisher was prepared to agree to the revised rules of naval warfare, because 'they give greater freedom to belligerents than the Articles of 1868 and are generally of a more satisfactory character to Great Britain.'[30] However, the Admiralty was not so certain. While the Admiralty was ruminating, the text of the new convention was finalized. Both Fisher and Pauncefote recommended approval.[31] While DNI Custance found the new rules to be an improvement over the 1868 Geneva Convention, he rejected the idea of embodying them in the form of an international convention. Instead, he proposed that the laws 'should be accepted on the understanding that they are not rules having the binding force of an International Treaty, but permissive and in the nature of instructions to be issued by Y[our] L[ordships] to the naval forces.'[32] The Admiralty agreed and indicated its opposition

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[26] Scott, ed., *1899 Conference*, 367.

[27] Ibid., 332, 343-344.

[28] Ibid., 79, 87; Pauncefote to Salisbury, 20 July 1899, FO 412/65, 331-332; Pauncefote to Salisbury, 21 July 1899, ibid., 334-336.

[29] 'The Peace Conference: Asphyxiating Shells and Expansive Bullets', *The Manchester Guardian*, 22 July 1899, p. 7.

[30] Fisher and Ardagh, Memorandum, 5 June 1899, Inclosure 1 to Pauncefote to Salisbury, 5 June 1899, FO 412/65, 127-128.

[31] Pauncefote to Salisbury, 17 June 1899, ibid., 165-66.

[32] Custance, Minute, 15 June 1899, ADM 116/98.

to adoption of the new laws of naval warfare as a binding convention.[33] Lord Salisbury agreed with the Admiralty's views.[34]

However, Pauncefote and Fisher did not simply accept these directions. Pauncefote appealed to Salisbury and the Admiralty to reconsider their position. Pauncefote stated on behalf of the delegation:

> The revised Articles in question having been unanimously accepted by all Powers represented at the Conference, there would seem to be no valid reason for the refusal of H. M. Govt. to sign the proposed Convention, and having regard to their humanitarian object we fear that such a refusal would expose H.M. Govt. to unfavourable comment.[35]

While the Admiralty still thought it would be disadvantageous to accept the new laws of naval warfare as an international convention, it reluctantly agreed 'as a matter of policy to withdraw their objections' based on an amendment that had been made to one proposed article since they had initially reviewed the proposed convention.[36]

In contrast, Mahan generally opposed the adaptation of the laws of war to naval warfare. After the proposed convention had been adopted by the committee's delegates, Mahan suggested three additional articles to provide that a belligerent's sailors rescued by neutral vessels following a sea battle should be considered 'incapable of serving again during the war, unless recaptured or until duly exchanged.'[37] Mahan's new articles were intended to preclude any repetition of the *Deerhound* affair that occurred during the American Civil War, in which a British yacht had rescued Confederate sailors from the CSS *Alabama* and refused to turn them over to the US as prisoners of war.[38] The Admiralty recommended rejection of

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[33] Admiralty to Foreign Office, 21 June 1899, FO 412/65, 200.

[34] Salisbury to Pauncefote, 21 June 1899, ibid., 201.

[35] Pauncefote to Salisbury, 22 June 1899, ibid., 210.

[36] Custance, Minute, 26 June 1899, ADM 116/98; Admiralty to Foreign Office, 27 June 1899, FO 412/65, 240.

[37] Scott, ed., *1899 Conference*, 391-392.

[38] Mahan to Fisher, 18 July 1899, *LP/ATM,*II: 643-644.

the additional articles as 'contrary to the well established principle of international law that a neutral flag protects the passengers on board a neutral ship.'[39] Mahan refused to be moved from his position and his intransigence led the American delegation finally to instruct him to withdraw his proposed changes 'to facilitate the conclusion of the work of the Conference'.[40]

Another proposed article concerned the treatment of the shore-ends of telegraph cables in time of war. The British delegation, including Fisher, supported requiring such cables to be treated the same as telegraph lines on land.[41] However, the Admiralty successfully opposed consideration of this issue because 'the question of submarine cables in time of war is at present unsettled, and that it is to the advantage of Great Britain that it should remain so, because control of them at such a time will really rest with the Power which holds the command of the sea.'[42] The British delegation then changed its position and succeeded in having all questions relating to submarine cables deferred to another conference.[43] Similarly, consistent with the Admiralty's views, the conference did not consider the question of bombardment of undefended harbours and coastal towns by naval forces. That issue was likewise deferred to a future conference.[44]

The growing dissension within the American delegation was especially apparent on one of the delegation's key goals: an international agreement on the immunity of private property, not contraband, at sea during war. White's early diplomacy led him to believe he might succeed. Germany and Austria indicated they would support the US on the issue.[45] But Great Britain, Russia, France, Italy, and other countries soon advised they would oppose any attempt to even present the

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[39] Admiralty to Foreign Office, 7 July 1899, FO 412/65, 307.

[40] Mahan to Fisher, 18 July 1899, *LP/ATM,*II: 643 (first letter). See also Scott, ed., *Instructions*, 39-42.

[41] Pauncefote to Salisbury, 21 June 1899, FO 412/65, 202.

[42] Admiralty to Foreign Office, 6 July 1899, ibid., 306-307.

[43] Fisher, Memorandum, 22 July 1899, Inclosure 1 to Pauncefote to Salisbury, 26 July 1899, ibid., 367-368.

[44] Pauncefote to Salisbury, 7 July 1899, ibid., 307.

[45] Holls, 'Reminiscenses', container 364, 7-8, Holls/Harvard Papers.

proposal as not falling within the scope of the Tsar's agenda.[46] Pauncefote proposed to object to any discussion of the topic, and Salisbury agreed with this approach.[47] Britain need not have worried about the issue. Mahan exercised his influence contrary to the delegation's instructions. In order to achieve unanimity within the American delegation, Mahan forced White to tone down his presentation on the proposal, and to leave 'out much that in [White's] judgment the documents emanating from us on the subject ought to contain.'[48] Mahan's opposition, as well as that of others within the delegation, was well known at the conference.[49]

When the topic arose in the Second Commission, Britain led other nations in arguing the subject was not within the scope of the topics for the conference. All White could achieve was agreement allowing him to raise the matter at a plenary session. The Russian delegate presiding then suggested the question be referred to a subsequent conference. That proposal was unanimously approved with France, Britain, and Russia abstaining.[50] At the plenary session later the same day, White made an impassioned, if watered down, speech in support of the immunity principle. He recognized 'contraband' needed to be defined as part of the effort to agree on immunity but that should not deter the conference from discussing the immunity principle now.[51] Fisher later reported White admitted 'contraband' was 'an elastic term' and the definition 'would depend on the relative strength of the belligerents and

[46] White, *Autobiography*, II: 260, 262-263, 265-268. Before he left Washington, Pauncefote likely told Hay that Britain would oppose introduction of the topic at the conference. See Sanderson to Salisbury, 24 May 1899, FO 83/1700.

[47] Pauncefote to Salisbury, 30 May 1899, FO 412/65, 118; Salisbury to Pauncefote, 3 June 1899, ibid., 124.

[48] White, *Autobiography*, II: 347.

[49] See Fisher, Memorandum (Secret), 22 July 1899, Inclosure 2 to Pauncefote to Salisbury, 26 July 1899, FO 412/65, 371.

[50] Scott, ed., *1899 Conference*, 411-413.

[51] Ibid., 46-49.

the neutrals.'[52] In the end, the US did achieve a unanimous view – with Britain again abstaining – that the issue would be considered at a subsequent conference.[53]

Both countries were keen on cooperating toward an agreement on arbitration of international disputes.[54] Consistent with the Admiralty's concerns expressed in its 'observations' on the conference topics, Fisher told White when they first met that while '[h]e favored arbitration' he 'feared it as detrimental to England.'[55] The readiness for action of the Royal Navy gave it an advantage over other powers that it would not want to give up by agreeing to such a plan. However, Fisher was inclined to try arbitration at least to some extent.[56] Fisher's views were reported to Salisbury by one of the British delegation's secretaries. The secretary thought Britain would have lost half of the advantage it possessed against France during the Fashoda Crisis in Africa the year before if mediation had been required.[57] Salisbury quickly dismissed the issue. He concluded, 'Our preparedness is excellent against attack – but is there any even remote probability of our suddenly attacking one of the Great Military Powers without giving an opportunity for mediation?'[58] Britain could not conceive of not providing a formal declaration of war as expected under existing international law or allowing for mediation if it entered into an international agreement for arbitration of disputes.

Britain and the US worked together to achieve an agreement on international arbitration of disputes. Despite various issues along the way, as the end of the conference approached, agreement on an international convention had been

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[52] Fisher, Memorandum (Secret), 22 July 1899, Inclosure 2 to Pauncefote to Salisbury, 26 July 1899, FO 412/65, 371.

[53] Scott, ed., *1899 Conference*, 49; Pauncefote to Salisbury, 7 July 1899, FO 412/65, 307.

[54] Salisbury to Pauncefote, 16 May 1899, ibid., 70; Scott, ed., *Instructions*, 14-16. White initially thought Great Britain was more interested in a permanent arbitration mechanism with the US than such an understanding with other nations. White, *Autobiography*, II: 268.

[55] White diary, 24 May 1899, box 228, White Papers.

[56] Ibid.; White *Autobiography*, II: 268.

[57] Maxwell to Howard, 30 May 1899, FO 83/1700.

[58] Sanderson, Minute, 30 May 1899, endorsed by Salisbury, ibid.

achieved.[59] However, Mahan created the most lasting rancour and conflict within the US delegation because on 22 July, he 'threw in a bomb' regarding that convention.[60] He had chanced upon a newspaper editorial 'rejoicing over the extreme results insured' by Article 27 of the proposed arbitration treaty. The editorial asserted that if Article 27 had been in effect, it 'would have prevented the last war' between the US and Spain.[61] Article 27 imposed a 'duty' on the signatory powers, in the case of a 'serious dispute' between two or more of them, to remind the disputing parties that the permanent court of arbitration was available to them.[62] Mahan was convinced Article 27 would compromise the Monroe Doctrine. Holls defended the article. Indeed, the US Department of State had already approved the proposed arbitration convention, including Article 27.[63] Mahan attacked Holls for supporting the provision and demanded that Article 27 be dropped. The other members of the delegation came around to Mahan's view. The solution initially proposed was to insist upon an amendment, inserting the qualifying words 'so far as circumstances permit' after the word 'duty'.[64]

News of the internal conflict became public.[65] The US delegation was 'greatly perplexed' how to resolve the issue.[66] The delegation hosted a meeting for key

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[59] Davis (1962), 137-172.

[60] White diary, 22 July 1899, box 228, White Papers; White, *Autobiography*, II: 338.

[61] Editorial Article 2, *The Manchester Guardian*, 22 July 1899, p. 7. Mahan later sent the article to Theodore Roosevelt. Mahan to T. Roosevelt, 9 Sept. 1905, *LP/ATM,*III: 139.

[62] Scott, ed., *1899 Conference*, 760-761. France first raised the issue of this 'duty' on 9 June. Ibid., 710-711.

[63] Minutes, Eighteenth Session of the United States Commission, 6 July 1899, Dispatch No. 3, box 13, folder 16, *RSDM/NHC*; Minutes, Twentieth Session of the United States Commission, 18 July 1899, ibid. (quoting telegram from Hay, 17 July 1899).

[64] White, *Autobiography*, II: 338; Mahan to Holls, 11-13 Mar. 1901, *LP/ATM,*II: 704-706; Letter, Holls to Mahan, 15 Mar. 1901, Mahan Papers; Newel to Mahan, 18 Dec. 1900, ibid.; Minutes, Twenty-second Session of the United States Commission, 22 July 1899, *RSDM/NHC*, box 13, folder 16. The official minutes do not describe in detail the debate, which must have been vehement based on the later letters of Holls, Mahan, and Newel.

[65] Special Correspondent, 'The Peace Conference', *The Times* (London), 25 July 1899, p. 3, col. 2. Given his earlier direction from the delegation to deal with the

delegates from England, France, Russia, and others. France refused any suggestion to limit the scope of Article 27, even if that meant the US might not ratify the arbitration treaty. White then proposed a declaration to be made by the US upon signing the convention, restating America's traditional policy of staying out of the affairs of foreign states. Not only did the key foreign delegates agree not to oppose such a declaration, they agreed to support it if necessary. At the evening's meeting of the US delegation, Low proposed an amendment to the draft declaration relating to the Monroe Doctrine, which was accepted by the delegation's members, including Mahan.[67] When the Convention for the Pacific Settlement of International Disputes was presented for final approval on 25 July, the declaration of the US was read.[68] Objections or comments were solicited, but silence reigned.[69] Despite his silence,

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press, Holls probably leaked news of the internal dispute. See Holls to Allen, 3 July 1899, container 120, Holls/Harvard Papers.

[66] White, *Autobiography*, II: 339. See Holls to Mahan, 15 Mar. 1901, Mahan Papers (describing the events following the meeting of the United States commission on July 22).

[67] Draft letter, White to 'Hon J H', 11 Aug. 1899, box 88, reel 78, White Papers; White diary, 24 July 1899, box 228, White Papers; White, *Autobiography*, II: 339-341; Minutes, Twenty-third Session of the United States Commission, 24 July 1899, box 13, folder 16, *RSDM/NHC*. White did not repeat his concern in his autobiography published years later, which was based on extracts of his diary entries. See White, *Autobiography*, II: 252, 339-340. He also downplayed the issue, telling Hay, 'we have had today at our rooms a meeting of various Ambassadors and others with reference to one or two provisions which need especial care.' White to Hay, 25 July 1899, box 86, reel 78, White Papers.

[68] The declaration stated:

> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy of international administration of any foreign State; nor shall anything in the said Convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

Scott, ed., *1899 Conference*, 99-100. White drafted the portion of the reservation preceding the last clause, *i.e.*, before the semicolon. Low added the last clause, which clearly relates to the Monroe Doctrine. Draft letter, White to 'Hon J H', 11 Aug. 1899, box 88, reel 78, White Papers; White diary, July 1899, box 228, ibid.; White, *Autobiography*, II: 340.

[69] White, *Autobiography*, II: 341. White had prepared a speech in support of the reservation if necessary. Rather than discard it, he recast it into the form of an interview, which was published in *The Times* two days later. See Special

Pauncefote tried to convince the US to remove the reservation. He told White, 'It will be charged against you that you propose to evade your duties while using the treaty to promote your interests.'[70] However, the reservation set at ease the concerns of others 'that the United States, elated with their victory over Spain, are eager to mix up in European affairs.'[71]

The US refused to sign the two conventions relating to the laws of war on land and adapting the 1864 Geneva Convention to maritime warfare at the closing of the conference. It signed the declaration prohibiting the dropping of explosives from balloons for a period of five years, but not the declarations relating to gas shells and expanding bullets. Britain did not sign any of the conventions or declarations at the conference. Nations in attendance were allowed until the end of the year to sign.[72] Historians have ignored the single resolution and six *vœux* ('wishes') unanimously adopted at the conference. (The US voted in favour of each; Britain abstained on all of them.) The six wishes recommended topics for the next conference.

Six of the seven statements (one resolution plus six wishes) either entirely or partially related to naval warfare. The resolution called for a general reduction in arms expenditures. The views urged that the next international conference should include discussion of the rights and duties of neutrals; reduction and limitation of new types and sizes of naval armaments; limitations on the size of naval forces and their budgets; a declaration of the inviolability of private property at sea; and restrictions on the bombardment of ports and towns by naval forces.[73] Thus, the next international conference would include a full range of subjects related to the laws of naval warfare.

Correspondent, 'The Peace Conference', *The Times* (London), 27 July 1899, p. 5, col. 4.

[70] White, *Autobiography*, II: 341-342.

[71] Special Correspondent, 'The Peace Conference', *The Times* (London), 26 July 1899, p. 5, col. 2.

[72] Scott, ed., *1899 Conference*, 220-221, 233.

[73] Ibid., 233-234.

Aftermath

After the signing ceremony, the delegations dispersed. Great Britain viewed the conference as a 'considerable success', particularly because of the convention on the peaceful settlement of international disputes.[74] Fisher had left on 26 July to return to England before assuming command of the Mediterranean Fleet.[75] Before his departure, he wrote two memoranda for the information of Lord Salisbury and the Admiralty. The first was a general discussion of the naval subjects at the conference that followed his previous reports and the decisions in each commission and sub-commission on which he served. Fisher reiterated that Article IV of the convention adapting the 1864 Geneva Convention to maritime warfare 'should not permit any embarrassment to the belligerents if they make free use of their powers.' He noted that Pauncefote had successfully prevented consideration of rules for the bombardment of unfortified locales by naval forces and treatment of the shore ends of submarine cables, as well as the United States' proposal for the immunity of private property at sea. In conclusion, Fisher stated, 'all the Naval Delegates have worked together most cordially and harmoniously.'[76]

His second memorandum, marked 'Secret', was far more revealing and expansive. Fisher provided summaries of his conversations with various delegates – all of which 'took place under the pledge of secrecy' – as well as his analyses of those conversations. There was not 'the slightest inclination' on the part of any of the naval delegates to agree to any international inspection or controls to ensure compliance with any limitations of armaments or budgets. According to Fisher, 'Not one of the Delegates ever made any allusion to Mr. Goschen's offer in the House of Commons that he was prepared to diminish the English programme of ship-building if other Great Powers would do the same.' Fisher's analysis of the focus of foreign navies showed the necessity for Britain to remain vigilant and promoted the importance of the Royal Navy's Mediterranean fleet, his new command. Russia's naval forces would be kept in harbour in case of a war only against England. Of course, naval

[74] Salisbury to Pauncefote, 30 July 1899, *Correspondence Respecting 1899 Conference*, 222; Pauncefote and Howard to Salisbury, 31 July 1899, ibid., 353-354.

[75] Pauncefote to Salisbury, 30 July 1899, ibid., 222.

[76] Fisher, Memorandum, 22 July 1899, Inclosure 1 to Pauncefote to Salisbury, 26 July 1899, FO 412/65, 367-368.

operations in a war of France and Russia against England would be quite different. Russia's naval delegate said its naval construction program was directed solely toward Japan and Germany, not England. The distribution of the French Navy showed France thought a war with England was more likely than against Germany, while Italy feared French bombardment of unfortified locations in the Mediterranean. France's naval commander 'is said to be an advocate for an instant offensive against the English Mediterranean fleet.' The expansion of other powers' navies also had to be watched. The United States' naval expansion 'must influence that of Great Britain if of no other Power.' The German Emperor intended to build a large navy, with the Germans closely monitoring French naval strategy.[77]

Fisher surmised that the United States' delegates were instructed not to participate in discussions on restricting budgets in contrast to the 'active part' they had taken regarding specific armaments. He expressed some surprise Russia made no effort to support the proposal to ban submarines, even though that subject was explicitly mentioned in the Tsar's list of subjects for consideration. Restating and paraphrasing Mahan's vehement opposition to the declaration to ban the use of poison gas shells, Fisher concluded, 'No doubt an American invention will shortly appear on these lines, and chloroform has already been suggested as the base.' Fisher declared the new convention on maritime warfare was 'in favour of England, as being the strongest belligerent.' Regarding America's attempt to introduce discussion of the immunity of private property at sea at the conference, Fisher noted that in addition to opposing the topic, Mahan also favoured privateering and opposed the Declaration of Paris's principle that a neutral's flag protects an enemy's goods on board. Fisher referenced the US Supreme Court's decision in *The Olinde Rodrigues*, which established 'a principle very much to the advantage of Great Britain, that for a military blockade the presence of one man-of-war is sufficient'. France and Germany had suggested raising the decision for discussion at the conference, but that had not occurred.[78] Finally, Fisher reported that foreign naval delegates had been impressed

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[77] Fisher, Memorandum (Secret), 22 July 1899, Inclosure 2 to Pauncefote to Salisbury, 26 July 1899, FO 412/65, 368-370.

[78] Ibid., 369-371; Tower to Salisbury, 25 May 1899, FO 83/1702.

The Olinde Rodriques involved the seizure of a Spanish ship during the Spanish-American War. The critical issue was whether one warship outside an

with the Royal Navy's readiness for war during the Fashoda crisis. He understood the arbitration convention allowed 'absolute freedom of action' during any period of arbitration and that how well prepared a nation was for war would influence any arbitration.[79]

Charles á Court, who had been providing memoranda to Salisbury throughout the conference, reported separately on naval topics. The US presented a new concern. Despite statements that the US stood apart from Europe, á Court viewed its proposal for the inviolability of private property at sea as insincere. Moreover, Mahan had told á Court the US would never discuss any limitation of naval armaments. Mahan asserted the 'vital interests' of the US 'now lie East and West, and no longer North and South; that the great question of the immediate future is China, … and this will entail a very considerable increase in her naval forces in the Pacific, which again must influence the naval arrangements of at least five Powers.' [80]

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enemy harbor could constitute an 'effective' blockade. The US Supreme Court held 'an effective blockade is a blockade so effective as to make it dangerous in fact for vessels to attempt to enter the blockaded port, … the question of effectiveness is not controlled by the number of the blockading force.' *The Olinde Rodriques*, 174 U.S. 510 (1899), reprinted in Charles H. Stockton, ed., *Recent Supreme Court Decisions and Other Opinions and Precedents* (Washington, DC: GPO, 1904), 40-58. France realized that under this decision, 'Great Britain could readily in time of war maintain a blockade, effective for war purposes, of all the coasts of Europe simultaneously.' Tower to Salisbury, 25 May 1899, FO 83/1702. The British Foreign Office's legal advisor questioned the reasoning of the decision, but recognized it was favorable, concluding 'although we may in the abstract disagree with [the reasoning], we should rather gain than lose practically were it established.' Davidson, Memorandum, 6 June 1899, ibid.

[79] Fisher, Memorandum (Secret), 22 July 1899, Inclosure 2 to Pauncefote to Salisbury, 26 July 1899, FO 412/65, 371.

[80] á Court, 'Note on the Limitation of Armaments', 29 July 1899, Inclosure to Pauncefote to Salisbury, 31 July 1899, FO 412/65, 415-416. Mahan was referring to France, Great Britain, Germany, and Russia obtaining concessions and areas of commercial influence in China following the Sino-Japanese War of 1894-1895. Japan also desired a piece of the Chinese markets. With the acquisition of the Philippines, the US now joined fully in the competition. See Robert Seager II, *Alfred Thayer Mahan: The Man and His Letters* (Annapolis, MD: Naval Institute Press, 1977), 410-411, 459-460.

Fisher received formal accolades for his work,[81] as well as more personal thanks. After receiving Fisher's memoranda, Salisbury thanked him for his 'important services' and invited him to the Foreign Office before departing to his new command.[82] Pauncefote told him 'there were many enquiries about you & pleasant things said' at the concluding dinner he had missed at The Hague.[83] Sir Henry Howard had become friends with Fisher, and thanked him for speaking to Salisbury about Howard's desire to be appointed Britain's representative in Vienna.[84]

The US delegation's post-conference actions contrast starkly with Britain's, especially the views expressed concerning its naval delegate, Mahan. Any appearance of solidarity and cordiality within the delegation began to disappear. Like Fisher, Mahan wrote two memoranda regarding naval matters. Unlike Fisher's reports, Mahan's were defensive. His first report related to discussions on disarmament and proposed limitations on naval weapons. According to Mahan, because it proved impossible to describe limitations in detail, 'insurmountable obstacles were encountered'. He spent a considerable portion of his first report defending his vote against banning asphyxiating gases, because 'a certain disposition has been observed to attach odium to the view adopted'. He summarized the reasons for his vote. He noted that while the American delegates freely joined in the discussions regarding particular armaments, they refrained from discussions relating to disarmament and budgets.[85]

In his second report, Mahan defended his positions on adaptation of the 1864 Geneva Convention to naval warfare and protection of neutral vessels engaged in saving seaman of sunk or destroyed ships following battle. The ten articles in the proposed convention allowed for a repeat of the *Deerhound* affair during the

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[81] See Pauncefote and Howard to Salisbury, 31 July 1899, *Correspondence Respecting 1899 Conference*, 354; Foreign Office to Admiralty, 9 Aug. 1899, ibid., 355; Neale to Fisher, 14 Aug. 1899, *FISR* 1/1, f. 73.

[82] Sanderson (on behalf of Salisbury) to Fisher, 28 July 1899, *FISR* 1/1, f. 71.

[83] Pauncefote to Fisher, 30 July 1899, *FISR* 1/1, f. 72.

[84] Howard to Fisher, 1 Aug. 1899, *FISR* 3/1, f. 10. Howard was not appointed to the post.

[85] Mahan, 'Report … with Reference to Navies', 31 July 1899, in Scott, ed., *Instructions*, 35-38. Mahan's undated mostly handwritten draft of this report is in container 214, Holls/Harvard Papers.

American Civil War. He decried the failure of the proposed convention to explicitly address neutral hospital ships at the scene of a naval battle. He was forced by the American delegation to withdraw his three additional articles to remedy these deficiencies. Still, his 'personal opinion' was that Articles 3 and 6 of the proposed convention should not be accepted by the US.[86]

White drafted the delegation's official report to Secretary Hay. He 'was especially embarrassed by the fact that the wording of it must be suited to the scruples of my colleague, Captain Mahan.' Mahan 'had very little, if any, sympathy with the main purposes of the conference, and has not hesitated to declare his disbelief in some of the measures which we were especially instructed to press.'[87] The delegation's refusal to sign the second and third conventions was based on the positions of Mahan and Crozier. Although the conference had refused to provide a full hearing and discussion of the immunity of private property at sea, it had approved referring the topic to a future conference and so the delegation 'was able at least to keep the subject before the world.'[88] After receiving the draft report, Mahan opposed pages that described the advantages of arbitration as adopted at the conference. Worn down by Mahan and doubts expressed by Low, White 'did not care to the contest the matter', and so the final report eliminated 'several pages' of the original draft.[89]

However, White advised Hay of his personal views regarding the delegation's positions, telling him the second and third conventions should be signed. He thought Crozier in fact would agree.[90] He asserted that a 'larger view' than Mahan's should be adopted with regard to the convention adapting the laws of war to naval conflict. White found the delegation's positions regarding the declarations on expanding bullets and asphyxiating gases 'embarrassing'. He described Mahan's arguments

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[86] Mahan, 'Report … Regarding the Work of the Second Committee of the Conference', 31 July 1899, ibid., 38-43.

[87] White, *Autobiography*, II: 347.

[88] White, 'Report to the Secretary of State', 31 July 1899, in Scott, ed., *Instructions*, 20-21, 24-25.

[89] White, *Autobiography*, II: 348.

[90] Indeed, Crozier had told his superior he did not think the revised articles of the laws of war on land contained anything the Army would find objectionable. Crozier to Corbin, 19 July 1899, reel 11, vol. 18, Hay Papers.

against the declaration on asphyxiating gases as 'fatally defective' and illogical. He concluded: 'While there were evident differences of opinion between the Captain [Mahan] and some others of us relating to various important questions, … I write this from a feeling of duty to the country and to the administration in order to show you how the whole matter, in the large, on a calm and cool review looks to me.'[91]

When Mahan learned Low had told President McKinley the convention on the laws of naval warfare should be signed, he immediately wrote Secretary of the Navy Long to explain the grounds for his opposition. Mahan's letter suggested that his concerns regarding the proposed convention on the laws of naval warfare were more academic than real.[92] When Low questioned his opposition to the convention, Mahan responded, 'present political expediency … is [not] a sufficient cause for entailing upon the future grave international complications.' Low asserted it was 'better that we should join in a general movement along the lines that have commanded such wide adherence, rather than stand aside altogether.'[93] Meanwhile, overweening political activist Holls met with Assistant Secretary of State Hill and told him of the events at the conference. Holls also met with President McKinley and gave him a full report, including the issues regarding Article 27.[94]

Three months later, Mahan published an article belittling the convention on international arbitration. He believed that nations should retain the right to resort to war as opposed to submitting disputes to arbitration.[95] Low and Holls countered with articles extolling the conference's accomplishments. Holls asserted that by consenting to the delegation's reservation on Article 27, the Monroe Doctrine had

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[91] White to Hay, 8 Aug. 1899, box 86, reel 78, White Papers.

[92] Mahan to Long, 27 Sept. 1899, *LP/ATM,*II: 659-60.

[93] Low to Mahan, 28 Sept. 1899, box 14, Low Papers.

[94] Holls to White, 21 Sept. 1899, box 20, vol. 19, Holls/Columbia Papers.

[95] A.T. Mahan, 'The Peace Conference and the Moral Aspect of War', *The North American Review* 169, no. 515 (Oct. 1899): 433-447.

Although he did not write at the time, Crozier likely opposed the arbitration convention as much as Mahan. See William Crozier, 'International Settlements', *The North American Review* 199, no.703 (June 1914): 857-865.

been officially recognized by the international community for the first time.[96] Low defended the delegation's positions and generally applauded the conference's outcome.[97] He sent a copy of his article to President McKinley and urged ratification of the arbitration convention.[98] All pretenses of civility and collegiality disappeared after Holls published a book claiming credit for saving the Monroe Doctrine.[99] Publication unleashed a virtual firestorm of controversy within the delegation. While the primary antagonists were Holls and Mahan, the entire delegation became entangled in the correspondence. Threats and colorful insults were made. Newel, for example, described Holls' conduct as 'one of the coolest manifestations of unadulterated cheek I have ever known, & I graduated from Yale College and have lived in the wild west [Minnesota] for 46 years.'[100] When the controversy threatened to explode into litigation, White wrote separately to Holls and Mahan suggesting that a way be found to close the matter.[101] Several months later, White withdrew his most serious charges, ending the matter.[102]

Mahan then made an unprecedented direct approach to the British government for assistance in changing America's support for the immunity of private property principle. On 26 November, Mahan wrote to Balfour.[103] Balfour sent Mahan's letter to Goschen and asked for observations.[104] Goschen had 'never read a more obscure &

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[96] Frederick W. Holls, 'The Results of the Peace Conference in their Relation to the Monroe Doctrine', *The American Monthly Review of Reviews* 20, no. 5 (Nov. 1899): 560-567.

[97] Seth Low, 'The International Conference of Peace', *The North American Review* 169, no. 516 (Nov. 1899): 625-639.

[98] Low to McKinley, 22 Nov. 1899, box 14, Low Papers.

[99] Frederick W. Holls, *The Peace Conference at The Hague* (New York: Macmillan, 1900), 269-275.

[100] Newel to White, 20 Feb. 1901, box 92, reel 83, White Papers.

[101] White to Mahan, 17 Jan. 1902, box 10, folder 4, RSDM/NWC; White to Holls, 6 Jan. 1902, container 245, Holls/Harvard Papers.

[102] Mahan to Holls, 12 Mar. 1902, *LP/ATM,*III: 13-14; Holls to Mahan 14 Mar. 1902, Mahan Papers. Although Holls said he would change the language in the next edition of his book (see Crozier to Mahan, 16 Apr. 1901, Mahan Papers), he died suddenly in July 1903 without ever publishing a second edition.

[103] See Balfour to Mahan, 20 Dec. 1899, Add MSS 49742, ff. 249-258, *AJB/BL*

[104] Balfour to Goschen, 14 Dec. 1899, Add MSS 49706, f. 226, ibid. Mahan's letter has not been located in any archive.

badly written letter than Mahan's. What on earth does he mean?'[105] Balfour thought Mahan's points were that the United States' traditional support for the immunity of private property at sea was a mistake, especially for Britain and the US – both sea powers – who might find themselves at war in the Far East as allies against Russia. Mahan, therefore, hoped the US would change its position for the benefit of the two nations' joint interests with Britain's support.[106] Goschen responded that Balfour should only indicate agreement with Mahan's view and that the Admiralty deprecated any change in Britain's long-standing opposition to the principle.[107] When he finally responded, Balfour told Mahan naval opinion in Britain supported Mahan's position and the Admiralty 'would be unanimous in deprecating any change.' However, 'In my own mind I am not absolutely sure that they are right'.[108] Balfour still harboured reservations concerning Britain's traditional position on the issue, as expressed almost exactly a year earlier to Salisbury.

The decision to accede to any of the conventions or declarations adopted at the conference proceeded differently in the US and Great Britain. In Britain, the proposed conventions and declarations received a full ventilation and analysis. The Admiralty opposed signing the convention on maritime warfare unless Article X was excluded. It was agreeable to prohibiting launching high explosives from balloons for five years, but not the other declarations.[109] The Law Officers approved signing the arbitration convention without reservation.[110] Pauncefote thought the maritime warfare convention should be signed without any reservation. He spoke with DNI Custance and wrote a memorandum arguing that Article X did not implicate the *Deerhound* situation and only appropriate legislation was required to give effect to the Article. He suggested asking the Law Officers for their opinion.[111] After considering the issue, the Law Officers agreed with the Admiralty that the convention on the laws

[105] Goschen to Balfour, 14 Dec. 1899, ibid., f. 227.

[106] Balfour to Goschen, 15 Dec. 1899, ibid., f. 228.

[107] Goschen to Balfour, 16 Dec. 1899, ibid., f. 233.

[108] Balfour to Mahan, 20 Dec. 1899, Add MSS 49742, ff. 249-251, ibid.

[109] Admiralty to Foreign Office, 9 Sept. 1899, FO 412/65, 486-487; Inclosure 4 to War Office to Foreign Office, 11 Oct. 1899, ibid., 497.

[110] Law Officers to Salisbury, 18 Sept. 1899, ibid., 487.

[111] Maxwell, Minute, 5 Oct. 1899, FO 83/1701; Pauncefote, Minute, 9 Oct. 1899, ibid.

of naval warfare could be signed except for Article X, which could not be agreed to because it would 'require legislation of a kind very difficult to frame or carry through' and was not 'sound in principle'.[112] Salisbury then decided that all three conventions should be signed, but with a reservation that Britain did not accept Article X of the convention on maritime warfare. The government would not sign any of the three declarations.[113] After all the other signatories agreed to its reservation, Great Britain signed the three conventions, excluding Article X of the maritime convention.[114]

In contrast, the US approached the conventions with some indifference. Despite the reports from Holls (or perhaps because of them) McKinley and Hay showed little interest in the conference's outcome.[115] Assistant Secretary Hill thought it would be useful to 'have a few Senators sufficiently interested to see that [the treaty] not be allowed to fail because of lack of interest.'[116] In his annual message to Congress, McKinley expressed support for the arbitration convention and the new maritime warfare convention.[117] The Senate approved the arbitration convention and the five-year prohibition against the use of balloons to deliver explosives on 5 February 1900. In April, McKinley sent the maritime warfare convention to the Senate, which quickly approved a month later.[118]

Re-evaluation: Fisher and Mahan at the Conference

The participation of Fisher and Mahan at the 1899 Conference has not been carefully analysed. What little examination that has occurred regarding Fisher is based on uncertain evidence resulting in questionable conclusions. For example, Ruddock MacKay overstates Fisher's actions regarding the proposed convention on the peaceful settlement of international disputes. He claims 'that Fisher, who knew that Goschen was a "determined opponent" of the proposal, worked in the lobbies

[112] Law Officers to Admiralty, 19 Oct. 1899, Inclosure to Admiralty to Foreign Office, 20 Oct. 1899, FO 412/65, 500-501.

[113] Salisbury to Pauncefote, 25 Oct. 1899, ibid., 503.

[114] Howard to Salisbury, 29 Dec. 1899, FO 83/1701.

[115] Davis (1962), 192.

[116] Hill to Holls, 9 Dec. 1899, container 106, Holls/Harvard Papers.

[117] McKinley, Message to Congress, 5 Dec. 1899, *FRUS* 1899, xxxv-xxxvii.

[118] Davis (1962), 199-202.

against it.' Mackay bases his assertion on a partial English translation of a report by Count Hatzfeldt to German Chancellor von Hohenlohe.[119] But that report is based on White's autobiography, which does not support Mackay's broader assertion.[120] Avner Offer has summed up the traditional view as, '"Jacky" Fisher was no respecter of the laws of war.'[121] However, Fisher was not the wild-eyed fanatic of unrestrained warfare as traditionally portrayed.

In contrast, Mahan was an obstinate opponent of any potential limitations that might touch upon any naval matter. He was an embarrassment to his American colleagues and caused significant friction within the delegation. Even Fisher thought some of Mahan's proposals were outlandish. Overall, Mahan's role has been more accurately portrayed, but the reasons for his actions inaccurately described.

Three pieces of evidence are consistently relied upon regarding Fisher's views on the laws of naval warfare and his conduct at The Hague. When carefully examined, none are convincing or reliable. The first is his questionable memoirs, written twenty years later, in which he asserted he fought against peace at the conference.[122] The inaccuracies in these recollections regarding Fisher's appointment already have been shown.

His statements regarding fighting against peace similarly are questionable. Fisher and his biographers consistently rely on an article written by his close friend,

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[119] Mackay (1973), 222, note 1.

[120] See E.T.S. Dugdale, ed. and trans., *The Growing Antagonism 1898-1910*, vol. 3 of *German Diplomatic Documents, 1871-1914*. New York: Harper & Brothers, 1930, pp. 75-76; White, *Autobiography*, II: 268.

[121] Offer (1989), 270; Avner Offer, 'Morality and Admiralty: "Jacky" Fisher, Economic Warfare and the Laws of War', *Journal of Contemporary History* 23, no. 1 (Jan. 1988): 100.

Nicholas Lambert summarily asserts, 'As a plenipotentiary at the previous 1899 conference, [Fisher] had seen at first hand how legal principles tended to shrivel whenever they conflicted with national self-interest.' N. Lambert (2012), 65. Fisher was not a plenipotentiary and no 'legal principles' shriveled at the conference. They expanded with the adaptation of the Geneva Convention to naval warfare.

[122] Admiral of the Fleet Lord Fisher, *Records* (London: Hodder and Stoughton, 1919), 55.

journalist W.T. Stead, after Fisher retired from the Admiralty in 1910.[123] This laudatory article devoted less than two pages to Fisher's conduct at The Hague.[124] Fisher's first biographer described his participation at the 1899 Conference in less than three pages, most of which is a lengthy quotation from Stead's article.[125] Ruddock Mackay devoted less than seven pages of his biography of Fisher to the 1899 Conference. Most of his account of Fisher's conduct is based on Stead's article or a report prepared by Germany's naval delegate, the latter of which forms the third piece of evidence.[126]

Stead's article is the basis for an alleged statement Fisher made at the Conference that 'was considered totally unfit for publication', responding to another delegate's speech about 'the humanising of war'.[127] If Fisher had uttered the statement, some contemporary record of it should exist, particularly in some newspaper article. But none has been found. As Mackay noted, the alleged pronouncement 'is coloured with Fisher's phraseology of the post-1904 period.'[128]

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[123] Ibid.; Admiral of the Fleet Lord Fisher, *Some Notes by Lord Fisher for his Friends* (London: Westminster Press, 1919), 59 (copy No. 1 of 100 in *ESHR* 17/5).

William Thomas Stead (1846-1912) championed the peace movement in the US and Great Britain. Nevertheless, he and Fisher were close friends, dating from Stead's journalism in the mid-1880s that helped force additional expenditures on the Royal Navy. Stead died on his way to a peace congress in New York when the RMS *Titanic* sank on 15 April 1912. Fisher was devastated by his loss. See Fisher to Esher, 22 Apr. 1912, *FGDN* II, 449-450

[124] W.T. Stead, 'Character Sketch: Admiral Fisher', *The Review of Reviews* XLI, no. 242 (February 1910): 117-118.

[125] Reginald H. Bacon, *The Life of Lord Fisher of Kilverstone* (London: Hodder and Stoughton, 1929), I: 120-123.

[126] Mackay (1973), 221-224. The report by Captain Siegel, dated 28 June 1899, is reproduced in full in German in Johannes Lepsius, Albrecht Mendelssohn Bartholdy, and Friedrich Thimme, ed., *Rings um die Erste Haager Friedenskonferenz*, vol. 15 of *Die Grosse Politik der Europäischen Kabinette, 1871-1914* (Berlin: Deutsche Verlagsgesellschaft, 1924), 225-230. A partial English translation is contained in Dugdale, ed. and trans., *Growing Antagonism*, 78-80.

[127] Stead, 'Character Sketch', 117. See also Fisher to Esher, 25 Apr. 1912, *FGDN* I, 453-454, in which Fisher expresses 'lasting regret' that his statements were 'deemed inexpedient to place on record (on account of their violence, I believe!)'.

[128] Mackay (1973), 222. See Fisher to unknown, 22 Feb. 1905, *FGDN* II, 51-52 (using nearly identical words). The unknown correspondent probably was Stead. See Mackay (1973), 222-223.

Stead also quotes Fisher as saying if you tell the enemy you 'intend to be first in and hit your enemy in the belly and kick him when he is down, and boil your prisoners in oil (if you take any!), and torture his women and children, then people will keep clear of you.'[129] As Mackay concluded, 'The implication that Fisher declared these views in a formal session of the conference should be treated with considerable reserve.'[130]

Siegel's report of his conversations with Fisher also does not provide reliable evidence of Fisher's actual views. Fisher spoke to Siegel in the greatest confidence and more than once asked that his conversations be treated as confidential and not disclosed to Pauncefote or other delegates.[131] Fisher claimed that after arriving in London from the West Indies, he told Goschen that only 'might makes right', and if Goschen did not agree with his views, he could appoint someone else to command the Mediterranean fleet.[132] Given Fisher's joy at receiving the 'tip-top' command in the Royal Navy, it is unlikely he said anything of this nature to Goschen. Moreover, Siegel's complete report in German reveals that most of Fisher's conversation consisted of arguments why Germany should not support America's position on the immunity of private property at sea and why French plans for a *guerre de course* against Britain would fail.[133]

Importantly, as Stead recognized, 'Fisher was fond of saying things in a way to make them stick without much caring whether his hearers would take him seriously or not.'[134] Fisher's fondness has created difficulties for historians to discern whether he really meant what he was writing or purportedly saying at a particular time. Fisher's statements often have been accepted without carefully considering their context or his actual intentions. In fact, he made many of his pronouncements for

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[129] Stead, 'Character Sketch', 117. See Fisher to unknown, 22 Feb. 1905, *FGDN* II, 51-52 (again using nearly identical words).

[130] Mackay (1973), 223.

[131] Siegel, Report, 28 June 1899, in Lepsius, *et al.*, ed., *Rings um die Erste Haager Friedenskonferenz*, 225, 230.

[132] Ibid., 229-230. See Dugdale, ed. and trans., *Growing Antagonism*, 80.

[133] Siegel, Report, 28 June 1899, in Lepsius, *et al.*, ed., *Rings um die Erste Haager Friedenskonferenz*, 226-229. See Dugdale, ed. and trans., *Growing Antagonism*, 78-79 (partial English translation).

[134] Stead, 'Character Sketch', 117.

effect.[135] Fisher believed in deterrence as a means to avoid war. His statements were calculated to convince his listeners that here was someone (and a navy and nation) that would do anything in war, regardless of legality.[136] One scholar has argued recently that Fisher engaged in a deterrence policy against Germany between 1904 and 1908 by making outrageous utterances intended to provoke German reaction.[137] Fisher did the same at the 1899 Conference.[138] He likely made some outlandish declarations privately during the conference for effect. But that does not mean Fisher actually intended to act in such a manner in war or that such statements reveal his true intentions or views regarding the laws of naval warfare.

Fisher was a combat veteran and had lost men under his command. When he met Ambassador White early in the conference, Fisher said 'that he was thoroughly for peace, and had every reason to be so, since he knew something of the horrors of war.'[139] Avowed peace activist Baroness Bertha von Suttner regretted Fisher's absence from a party more than half way through the conference, because 'he is one of the jolliest of the dancers'.[140] Holls grew fonder of Fisher every time he saw him.[141] Holls and Suttner's favourable views of Fisher are unlikely if he was the rabid advocate of unbridled war as he later portrayed himself and as characterized by others.

Furthermore, the conference records do not show Fisher as the proponent of unrestricted warfare that he, and others, later described him to be. Fisher's alleged war against peace is belied by his conduct as a negotiator and go-between with the

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[135] See Fisher to unknown, 22 Feb. 1905, *FGDN* II, 51.

[136] Andrew Lambert, *Admirals: The Naval Commanders who Made Britain Great* (London: Faber and Faber, 2009), 298; Mackay (1973), 223; Richard Dunley, 'Sir John Fisher and the Policy of Strategic Deterrence, 1904-1908', *War in History* 22, no. 2 (2015): 156-158.

[137] Ibid., 155-173.

[138] Shawn Grimes reaches the same conclusion regarding Fisher and his deterrence policy at the 1899 Conference, although without reviewing Fisher's conduct at the conference or addressing the evidence relied upon by others. See Grimes (2012), 60.

[139] White, *Autobiography*, II: 267.

[140] Bertha von Suttner, *Memoirs of Bertha von Suttner: The Records of an Eventful Life* (Boston, MA: Ginn, 1910), II: 314.

[141] Holls, 'Reminiscenses', container 364, 61, Holls/Harvard Papers.

Admiralty and the government. Certainly, Fisher followed the Admiralty's views on most issues that were raised in the commissions and sub-commissions to which he was assigned. However, the Admiralty did not always follow Fisher's recommendations and on occasion criticized his views. Concerning discussions on limitations on the calibre of naval guns, for example, DNI Custance said, 'Fisher has clearly mixed up with it the question of armour.'[142] When it came to consideration of adaptation of the laws of land war to naval warfare, the Admiralty held a much harder stance than Fisher. Fisher surely knew the Royal Navy was constrained by its civilian masters. Neither he nor the Admiralty could ignore an international treaty or limitations on naval warfare simply because it might suit them in time of war. His conduct and experiences at the 1899 Conference, therefore, do not support the traditional view that Fisher was 'no respecter of the laws of war'. Rather, Fisher's actions at the conference – and thereafter – show him as understanding the potential implications of the laws of naval warfare for naval planning.

In contrast, Mahan's conduct at the 1899 Conference has been accurately described as 'a conscience operating not in behalf of peace but in behalf of the unfettered exercise of belligerent power.'[143] 'Mahan used his ten weeks of leisure at The Hague to … sabotage as best he could American adherence to any decision the conference threatened to reach that tended to ameliorate the harshness of war.'[144] However, it is not accurate to conclude, 'What Mahan did at The Hague, therefore, and did most effectively, was to prevent the other members of the American delegation from making fools of themselves with the politicians, statesmen, and businessmen back home.'[145] Mahan cared little about preventing anyone from making fools of themselves. He cared only about his navy and its future. Mahan's actions at the conference are better understood in light of his views regarding the role he wanted the US Navy to play on the world stage.

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[142] Custance, Minute, 2 June 1899, ADM 116/98.

[143] Barbara W. Tuchman, *The Proud Tower* (New York: Bantam Books, 1967), 303.

[144] Seager, *Mahan*, 410.

[145] Ibid., 411.

Mahan was just not any naval delegate. He was the prophet of American sea power.[146] Mahan was a 'Neo-Hamiltonian', a member of a school of thought that arose from the sudden American involvement in world politics at the end of the nineteenth century. Neo-Hamiltonians 'saw international politics as basically a struggle among independent nations with interests which not infrequently brought them into conflict with each other.' Mahan attempted to bridge the gap between the military and civilian worlds. He was a prophet of military expansion and tried to build a nexus between the US Navy and the general community.[147] Mahan wanted the US to have a first-rate, blue-water navy. His opposition to rules to make war more humane, to arbitration, and to the immunity of private property at sea was consistent with his view that the US needed a large navy.[148] As he later told President Theodore Roosevelt, '[W]hat was expedient to our weakness of a century ago is not expedient to our strength today. Rather should we seek to withdraw from our old position of the flag covering the goods. *We need to fasten our grip on the sea*.'[149]

Accordingly, Mahan took it upon himself to ensure that nothing occurred at the conference that might hamper or restrict the US Navy. Mahan knew what he wanted the Navy to become and the role he wanted it to play. Indeed, Mahan justified his positions regarding arms limitations to Fisher writing, 'the conditions which constitute the necessity for a navy, and control its development, have within the past year changed for the United States, so markedly, that it is impossible yet to foresee, with certainty, what degree of naval strength may be needed to meet them.'[150] Granting immunity to private property at sea was a proposal Mahan would never support, because it was a 'small navy' policy. Similarly, that an editorial in a foreign newspaper caused Mahan to suddenly realize the alleged risk to the Monroe Doctrine arising from the word 'duty' in Article 27 is difficult to believe. Rather, he more likely had been searching for some basis to prevent the US from signing the

[146] Peter Karsten, *The Naval Aristocracy: The Golden Age of Annapolis and the Emergence of Modern American Navalism* (New York: Free Press, 1972), 336-342.

[147] Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, MA: Belknap Press, 1957), 270-271, 274.

[148] See A.T. Mahan, *Armaments and Arbitration* (New York: Harper & Brothers: 1912), 66-67.

[149] Mahan to T. Roosevelt, Dec. 27, 1904, *LP/ATM,*III: 113 (emphasis added).

[150] Mahan to Fisher, 18 July 1899, *LP/ATM,*II: 643.

arbitration convention, for two reasons. First, Mahan was an opponent of international arbitration of disputes between nations as a general proposition.[151] Such a requirement would adversely influence the need for a large navy and its ability to plan for immediate operations should war loom on the horizon. Second, enforcement of the Monroe Doctrine required a larger navy and effective planning to ensure the US could exclude any European power from unwanted expansion into the North American region.[152] By coercing the US delegation to insert the reservation regarding the Monroe Doctrine, Mahan furthered the need for a navy beyond the small defence-oriented force that had been the US Navy's traditional role. In acting as he did, Mahan ensured that the laws of naval warfare would have as minimal impact as possible on the development of the US Navy and on its strategic planning for the future, regardless of where and what that future might be.

Conclusion

The traditional retrospective view of the 1899 Conference has been that it was a waste of time.[153] Marder encapsulated it simply as a 'fiasco'.[154] Although the tangible accomplishments of the 1899 Conference seem limited, 'the precedents it established … paved the way for further advances in international law'.[155] This was especially true regarding the laws of naval warfare. Great Britain agreed to discuss issues of international law for the first time in nearly fifty years. The delegates reached agreement adapting the Geneva Convention to naval warfare, the first international treaty affecting naval warfare since the Declaration of Paris. More importantly, the countries present discussed international agreements on a variety of aspects of naval warfare, including reduction of expenditures, naval weapon systems,

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[151] See Mahan, 'Moral Aspect of War', 433-447.

[152] George W. Baer, *One Hundred Years of Sea Power: The U.S. Navy, 1890-1990* (Stanford, CA: Stanford University Press, 1993), 12, 35; Dirk Bönker, *Militarism in a Global Age: Naval Ambitions in Germany and the United States before World War I* (Ithaca, NY: Cornell University Press, 2012), 195.

[153] Davis (1962), 212, 213. In his later work on the 1907 Conference, Davis softened this view somewhat. See Davis (1975), vii-viii.

[154] Marder (1940), 341.

[155] Daniel Hucker, 'British Peace Activism and "New" Diplomacy: Revisiting the 1899 Hague Peace Conference', *Diplomacy & Statecraft* 26, no. 3 (Oct. 2015): 405, 418-420.

and permitted acts during war. While few of these discussions ended in agreement, nearly all were referred to the next international conference, which was expected to take place in a few years.[156] The 1899 Conference, therefore, set the stage for much study and analysis, and opened the door for future discussion and consideration. By ignoring the 1899 Conference, naval historians have ignored its foundational aspects.

A few weeks after the conference, Mahan wrote, 'The Conference itself was very well for a time, and interesting in a way; but ten weeks of it was rather too much.'[157] His low-key description belied the important and controversial role he had played and would continue to play. Mahan acted as one man's navy – his vision of what the US Navy should become. In doing so, he ignored his instructions and did not allow any opposition or lack of approbation from within the US delegation or other nations deter his efforts. He worked to ensure that nothing in the laws of naval warfare or any other international declaration or convention adopted would impinge upon the US Navy's freedom of action or ability to grow into a blue-water navy. Mahan made sure the 1899 Conference closed no doors for the US Navy – his navy. In this undertaking, he generally succeeded.

For the Royal Navy, the conference was a mixed outcome. The Admiralty reluctantly accepted adaptation of the Geneva Convention to naval warfare. It appeared to have successfully defended its positions favouring belligerent rights and unfettered naval action in time of war, but many important topics had simply been deferred to a future conference. As a delegate, Fisher had gained insights into civilian and military views of international law and had experienced the give and take of diplomacy. But the greater significance for the Royal Navy was that it had been forced to participate for the first time in an international conference discussing the conduct of naval warfare. It no longer possessed the relative aloofness it had enjoyed in the latter half of the nineteenth century. Over the next ten years, Fisher, the Admiralty, and the British government would devote enormous time and resources considering international law and naval warfare. The 1899 Conference was just the first period of a long match.

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[156] Scott, ed., *1899 Conference*, 233-234.

[157] Mahan to Ashe, 23 Sept. 1899, *LP/ATM,*II: 658.

Chapter 5

Theory and Practice: 1899 to 1905

Neither Great Britain nor the United States were idle regarding the laws of naval warfare during the years that preceded the call for the 1907 Hague Conference. Both nations and their navies engaged in theoretical planning and analysis about the laws of naval warfare during this period. Each also experienced the practical application of the laws of naval warfare as a belligerent and as a neutral during war. These theoretical and practical experiences informed the positions the two nations and their navies would take regarding the laws of naval warfare in succeeding years.

This chapter considers four overlapping examples of theory and practice of the laws of naval warfare between late 1899 and 1905. The first case study is one of practical application. Soon after the 1899 Conference ended, Great Britain found itself at war in South Africa. As a result of its assertion of the belligerent right to search and seize neutral ships suspected of carrying contraband, England faced objections from neutrals and learned the limitations of belligerent rights. The second example is the preparation of a naval war code by the United States. The US Naval War Code of 1900 generated much international interest, but ultimately was rescinded after it failed to gain acceptance by other nations. As the war in South Africa wound down, Britain studied protection of its merchant fleet and the vulnerability of its food supplies during war under existing international law. These theoretical studies form the third example and reveal Britain's expectation that nations would generally adhere to international law during war. The final case study, one of practical application, is the Russo-Japanese War, in which Britain and the US were neutrals. Both countries successfully insisted that Russia adhere to established principles of international law.

Practice: The South African War

Great Britain became a belligerent in a major conflict for the first time since the Crimean War after the South African Boers declared war in October 1899. Having defended belligerent rights at the 1899 Conference, England now had an opportunity to exercise them. But the Boers had no navy to engage and defeat on the

high seas. They had no ports for the Royal Navy to blockade. They possessed no merchant ships for the Royal Navy to seize. The Boers' source of sea-borne commerce only was through the neutral port of Lorenço Marques on Delagoa Bay in Portuguese East Africa. At best, Britain could seize contraband on neutral ships bound for Lorenço Marques that would be then shipped on land to the Boers.

Thus, the war hardly seemed one in which important issues of the laws of naval warfare might arise. Indeed, Prime Minister Salisbury initially took the position that neutral ships should not be searched. Miscommunications, however, led the Royal Navy commander in South Africa to exercise belligerent rights aggressively. The high commissioner in South Africa compounded the problem by believing provisions had been declared contraband, thereby authorizing the seizure of neutral ships headed for Lorenço Marques with cargoes of food. The Law Officers quickly opined that food could only be considered contraband if proof existed it was bound for the use of enemy forces. Salisbury then changed his mind and decided the right of search and seizure should be exercised if there was a reasonable basis for believing that contraband was on board a ship destined for the Boers, including food that could be used by enemy troops. When a shipment of munitions and provisions was rumoured en route to Delagoa Bay, Salisbury directed that all neutral ships in South African waters be stopped and searched and any contraband believed destined for the Boers seized. The Law Officers then declared that food could be seized only if absolute proof existed it was to be used by the enemy. Although reluctant to withdraw his directive, Salisbury relented in the face of opposition from within the cabinet, including Goschen, who was concerned about setting dangerous precedents that would antagonize neutrals.[1]

Thus matters sat from late October until early December 1899. The Law Officers then provided comments on a previously issued proclamation prohibiting any British subject from trading with the enemy. They responded that 'trade between British subjects whether as shipowners or shippers, and the enemy' was prohibited 'whether the ship carrying the goods sails from a port of departure in the United Kingdom or abroad.' However, neutrals could trade with the Boers. The government had decided that 'the destination of the ship is *not* conclusive for purposes of Prize

[1] Coogan (1981), 30-35.

Law as to the destination of the goods.'[2] However, British prize law provided, 'The destination of the Vessel is conclusive as to the destination of the Goods on board.' The Naval Prize Manual also stated that if the 'ostensible' destination of a neutral ship was a neutral port, but the vessel 'in reality intended … to proceed with the same cargo to an Enemy port', then the voyage would be 'held to be "Continuous," and the destination is held to be Hostile throughout.'[3] Britain was expanding its application of the continuous voyage doctrine to align more closely with the positions of the US during the American Civil War. The Law Officers warned that the country had 'far more to lose than to gain' and 'the immediate gain is quite disproportionate to the ultimate and prospective loss' from expanding the doctrine of continuous voyage. The doctrine had 'not hitherto been accepted law' and was contrary to the Admiralty's instructions to its ships' captains. Because of the size of Britain's merchant navy, the doctrine would limit Britain's sea borne commerce when it was a neutral in war. The report urged a conference between the Foreign Office, Colonial Office, and Admiralty to consider this issue and decide the appropriate course of action.[4] Unfortunately, the warning and suggestion came one day too late.

On the same day the Cabinet received the Law Officers' report, HMS *Partridge* seized the British merchant ship *Mashona* and the Dutch vessel *Maria*. American companies owned most of the cargo on both ships, including substantial quantities of foodstuffs, at least some of which was destined for one of the Boer republics. Despite being bound from one neutral port to another, the ships and all their cargo were sent to a prize court for violating British law against trading with the enemy. The Royal Navy also intercepted and off-loaded cargo – mainly food – on board the British steamer *Beatrice* consigned to a Portuguese firm in Lorenço Marques. Again, this cargo was owned and shipped by an American company. The companies whose cargo had been seized promptly complained to the US and

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[2] Davidson, 'Minutes on the Law Officers' Report of November 28, 1899', 5 Dec. 1899, CAB 37/51/92, pp. 3-4. Stephen Cobb attributes these minutes to Lord Selborne, who at the time was under-secretary of state for the colonies. See Cobb (2013), 153, note 85.

[3] Thomas E. Holland, *A Manual of Naval Prize Law* (London: HMSO, 1888), 22.

[4] Davidson, 'Minutes on the Law Officers' Report', 5 Dec. 1899, CAB 37/51/92, pp. 3-4.

demanded an explanation and compensation.[5] After confirming that the companies were American entities and none of the seized cargo was contraband, Secretary of State Hay instructed Ambassador Joseph Choate in England 'to bring the matter to the attention of the British Government, and to inquire as to the circumstances and legality of the seizure. If it was illegal, you will request prompt action and restitution in the case.'[6]

Salisbury's government did not immediately respond to the United States' queries. The lack of a clear and coherent policy regarding search and seizure of neutral ships was causing more issues. The Admiralty telegraphed that the German mail steamer *Bundesrath* had sailed through Aden for Delagoa Bay reportedly carrying ammunition and suspected combatants. Concerns existed over a supply route bringing trained military personnel and weapons through the Suez Canal and past Aden.[7] For the Admiralty, it may have been an intelligent use of naval power to disrupt any such possibility, regardless of the diplomatic consequences. The high commissioner and military commander in South Africa clamoured for a blockade of Delagoa Bay, the illegality of which Salisbury recognized.[8] Arthur Balfour, Leader of the House of Commons, instead proposed that the country 'should ask Germany's consent' to 'leas[e] Delagoa Bay *by the week* for a period, not in any case longer than the war, and as much shorter as we choose to make it.'[9] Salisbury denigrated the proposal, because it had little chance of being approved by Germany or the House of Commons and might expand the war to European nations.[10] Balfour then withdrew

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[5] Stowe to Cridler, 6 Dec. 1899, *FRUS* 1900, 529; Hopkins & Hopkins to Hay, 12 Dec. 1899, ibid., 529-530.

[6] Hay to Choate, 21 Dec. 1899, ibid., 534.

[7] Harris to Admiralty, 5 Dec. 1899, Inclosure No. 2 to MacGregor to Foreign Office, 16 Dec. 1899, in Foreign Office, *Correspondence Respecting the Action of Her Majesty's Naval Authorities with regard to Certain Foreign Vessels (Africa No. 1)* (London: HMSO, 1900) (hereafter *Correspondence Africa No. 1*, 1.

[8] See Salisbury, Minute on Sanderson, 'Memorandum Private and Confidential upon Delagoa Bay', 15 Dec. 1899, in G.P. Gooch and Harold Temperley, eds., *The End of British Isolation*, vol. I of *British Documents on the Origins of the War, 1898-1914* (London: HMSO, 1927), 243.

[9] Balfour, 'Suggestions about Delagoa Bay', 24 Dec. 1899, CAB 37/51/100, pp. 1, 2 (emphasis in original). Balfour indicated he was willing to pay as much as '100,000*l.* a-week' if necessary. Ibid., p. 2.

[10] Salisbury, 'Occupation of Delagoa Bay', 27 Dec. 1899, CAB 37/51/102, pp. 1-3.

his suggestion, but stated his 'personal view is that we are more likely to get into trouble by doing too little than by doing too much.' He urged that some 'scheme for dealing promptly and effectually' with Lorenço Marques be prepared.[11]

At the same time, the Law Officers warned the Admiralty of the substantial difficulties of searching and seizing neutral ships, including where and how such a search could occur and what evidence of ownership of cargo might be presented.[12] These warnings came either too late or were ignored, because a Royal Navy cruiser seized the *Bundesrath* and delivered it to a prize court.[13] Germany's foreign minister promptly summoned England's ambassador, told him of the seizure, assured him the ship carried no contraband, and asked that the vessel be released.[14] Britain now had seized cargo on three vessels owned by neutrals from the US and an entire ship from neutral Germany. Balfour changed his previously aggressive stance and told his uncle on New Year's Day that he was 'extremely indignant with the Adm^{ty} for their want of foresight in connection with the detention of neutral vessels. … In short, if a search at sea is impossible & a search in port is illegal, we may as well apologize to the Germans and withdraw our cruisers altogether from the neighborhood of Delagoa Bay.'[15] The next day, Balfour met with Goschen and First Naval Lord Admiral Kerr, among others, and 'cleared up [his] ideas on the law of search on the high seas and procedure before Prize Courts.' He reported that based on what he had learned, 'the "thorough search" of vessels going to Delagoa Bay, for which [he had] been pressing, cannot be carried out.' Balfour concluded that the laws 'seem ingeniously contrived to inflict the maximum inconvenience on Neutrals and to afford the minimum security to Belligerents.'[16]

Britain still had not responded substantively to either the US or Germany. The Foreign Office told the United States the 'only information' it had was that the cargo

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[11] Balfour, Untitled Memorandum for the Cabinet, 28 Dec. 1899, CAB 37/51/104, pp. 1-2.

[12] Foreign Office to Admiralty, 'Search of Neutral Ships for Contraband of War by His Majesty's Ships', 27 Dec. 1899, ADM 1/7425, pp. 1-2.

[13] MacGregor to Foreign Office, 29 Dec. 1899, in *Correspondence Africa No. 1*, 2.

[14] Lascelles to Salisbury, 30 Dec. 1899, ibid.

[15] Balfour to Salisbury, 1 Jan. 1900, Add MSS 49691, *AJB/BL*.

[16] Balfour to Salisbury, 2 Jan. 1900, ibid.

on the *Mashona* was seized because it was flour destined for the Boers.[17] The US did not consider the response adequate, and in three communications dated 2 January 1900, Hay instructed Choate to 'bring the matter promptly to the attention' of the British government and to state that the goods seized from all three ships 'could not be considered contraband of war, and therefore not subject to capture.' Choate was 'to request prompt restitution of the goods.'[18] Salisbury told Choate he had no knowledge of the *Beatrice*, although the Admiralty likely had information, and that the *Mashona* and *Maria* were both seized as British ships trading with the enemy in violation of British law. He also suggested it would be difficult to release the cargo because they were subject to the ruling of the prize court. Choate responded that the American goods certainly could be released upon order from the prime minister. Salisbury had no established view whether the food on the ships could be seized as contraband. However, 'in the event of a war between Great Britain and any continental power it would be a serious detriment both to England and America to have had food declared contraband of war.' Choate told Hay, 'In view of the serious aspect of these seizures as calculated to cause irritation in the United States and Germany I think they must come to a prompt decision.'[19] Britain was struggling with whether to treat food as absolute or conditional contraband. The Naval Prize Manual instructed officers to treat it as conditional contraband, unless a neutral ship's papers revealed that the destination of the vessel, either intermediate or ultimate, was 'a hostile Port used exclusively or mainly for Naval or Military Equipment.'[20]

Similarly, Germany demanded the release of the *Bundesrath*.[21] Salisbury disingenuously told Germany's ambassador he 'had no information on the subject' beyond suspicions the ship was carrying ammunition.[22] The *Bundesrath* presented a

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[17] See Choate to Hay, 1 Jan. 1900, *FRUS* 1900, 538-539.

[18] Hay to Choate, 2 Jan. 1900, ibid., 539; Hay to Choate, 2 Jan. 1900, ibid., 539; Hay to Choate, 2 Jan. 1900, ibid., 539-540.

[19] Choate to Hay, 6 Jan. 1900, reel 7, Hay Papers. See also Choate to Hay, 4 Jan. 1900, *FRUS* 1900, 542.

[20] Holland, *Naval Prize Manual*, 20-22.

[21] Salisbury to Lascelles, 31 Dec. 1899, in *Correspondence Africa No. 1*, 3; Lascelles to Salisbury, 1 Jan. 1900, ibid., 4.

[22] Salisbury to Lascelles, 2 Jan. 1900, ibid., 5. See Salisbury to Lascelles, 30 Dec. 1899, ibid., 3.

particular problem because it also was carrying mail on behalf of the German postal system. The issue was whether the mail could be searched for communications intended for the enemy, which might reveal the intended destination for any conditional contraband on board. Diplomatic communications between a neutral and enemy government normally could not be searched.[23] Salisbury therefore directed that the naval officer present should confer with the German consul to facilitate the 'speedy dispatch' of the ship's mails.[24]

Matters soon went from bad to worse. The Royal Navy detained the German mail steamer *General* on 'strong suspicion' of carrying contraband.[25] Germany reacted quickly to this further affront as well as the continuing failure to release the *Bundesrath*. Count Hatzfeldt, Germany's ambassador in London, told Salisbury that because the *Bundesrath* was travelling between two neutral ports it therefore could not be carrying contraband 'according to recognized principles of international law.' Salisbury previously had rejected Germany's position.[26] Hatzfeldt now pointed out that Britain had rejected the American concept of 'continuous voyage' in 1863 and quoted from the Admiralty's 1866 'Manual of Naval Prize Law'. He therefore demanded the immediate release of the *Bundesrath*.[27] Indeed, Great Britain's Naval Prize Manual of 1888 did not authorize the seizure of neutral ships bound for a neutral

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[23] See Holland, *Naval Prize Manual*, 27.

[24] Salisbury to Lascelles, 2 Jan. 1900, in *Correspondence Africa No. 1*, 5. The lack of direction within the government is especially apparent regarding the mail carried by the *Bundesrath*. On 3 January, Colonial Secretary Joseph Chamberlain told the governor in Durban the mail on board the ship was now within the custody of the prize court and should not be touched unless the captain of HMS *Magicienne* applied to the prize court for their release and the application granted. See Chamberlain to Hely-Hutchinson, 3 Jan. 1900, Inclosure 2 to Colonial Office to Foreign Office, 3 Jan. 1900, ibid., 5-6.

[25] Admiralty to Foreign Office, 4 Jan. 1900, ibid., 6. When later asked for the basis for the seizure, the Admiralty produced an order to the East Indies Station directing that vessels carrying contraband were to be seized and searches for such cargo were 'to be prosecuted in British territorial waters and on the high seas.' Foreign Office to Admiralty, 6 Jan. 1900, ibid., 9-10; Admiralty to Commander-in-Chief, East Indies Station, 23 Dec. 1899, Inclosure 2 in Admiralty to Foreign Office, 6 Jan. 1900, ibid., 10.

[26] Salisbury to Lascelles, 4 Jan. 1900, ibid., 7.

[27] Hatzfeldt to Salisbury, 4 Jan. 1900, ibid., 6.

port unless an intermediate or ultimate destination was an enemy port.[28] When Germany learned of the seizure of the *General*, Hatzfeldt demanded that ship's immediate release. He also asked Salisbury to instruct British warships 'to respect the rules of international law, and to place no further impediments in the way of the trade between neutrals.'[29] Britain's ambassador was summoned in Berlin and reminded that even if contraband was on board, Great Britain had no authority to seize a neutral ship travelling between two neutral ports, citing the seizure of the *Springbok* during the American Civil War.[30]

Although the Admiralty had sent the Foreign Office a draft order directing that no further neutral ships bound for South African waters be searched,[31] on 6 January the Royal Navy seized another German mail steamer, the *Herzog*.[32] The German Empress had sponsored a Red Cross Society group on board the ship. Germany's Foreign Minister von Bülow demanded its prompt release, the payment of compensation for losses incurred as a result of the unlawful seizures, and assurances such events would not happen again.[33] Meanwhile, no contraband was found on the *General* and its cargo was re-stowed so that the ship could continue.[34]

Still, tensions – and tempers – were increasing. The note Salisbury received regarding seizure of the *General* was 'of a tone very unusual in diplomatic correspondence'.[35] The note was 'worded in so abrupt a manner, and couched in language which imputed to Her Majesty's Naval Commanders that they had shown a disrespect to international law, and placed unnecessary impediments in the way of neutral commerce.'[36] Although Salisbury advised that the prize court would

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[28] Holland, *Naval Prize Manual*, 21-22.

[29] Hatzfeldt to Salisbury, 5 Jan. 1900, in *Correspondence Africa No. 1*, 8.

[30] Lascelles to Salisbury, 5 Jan. 1900, ibid., 14.

[31] Draft of Proposed Telegram from Admiralty to Rear-Admiral Bosanquet, Inclosure to Admiralty to Foreign Office, 5 Jan. 1900, ibid., 9.

[32] Admiralty to Foreign Office, 6 Jan. 1900, ibid., 11.

[33] Lascelles to Salisbury, 7 Jan. 1900, ibid., 12.

[34] Admiralty to Foreign Office, 6 Jan. 1900, ibid., 10; Salisbury to Lascelles, 8 Jan. 1900, ibid., 16; Admiralty to Foreign Office, 10 Jan. 1900, ibid., 17.

[35] Salisbury to Lascelles, 7 Jan. 1900, ibid., 13.

[36] Salisbury to Lascelles, 17 Jan. 1900, ibid., 21.

adjudicate the fate of the *Herzog*, the Admiralty was directed on the same date to order the ship's peremptory release.[37]

Only the *Bundesrath* now remained in British hands. Salisbury rejected Hatzfeldt's contention that the seizure was contrary to the position the government had taken regarding the *Springbok*. Salisbury asserted the British government had never objected to the decision of the prize court seizing the ship. In addition, the Admiralty's 1866 'Manual of Naval Prize Law' was not an 'exhaustive or authoritative statement', and while it may have applied in past wars, it was 'quite inapplicable to the case which has now arisen of war with an inland State'. Nevertheless, instructions had been sent repeatedly for the speedy completion of the necessary inspection of the ship's cargo.[38] Salisbury 'would do everything in [his] power to avoid, if possible, the recurrence of such incidents as those of the German ships recently seized.'[39] Salisbury also ordered that no more mail steamers be stopped.[40] On 17 January, Salisbury tepidly defended the Royal Navy from Germany's suggestion it had violated international law, saying the government 'cannot decide' whether British naval officers 'exceeded the right of search accorded by international practice to belligerents.' However, Salisbury also stated the government 'regret the inconvenience which has been caused on the occasion.'[41] The *Bundesrath* was released on 18 January, and while Germany disagreed that no violation of international law had occurred, the dispute subsided.[42] In a speech announcing release of the ships and Britain's expression of regret, Bülow pointed out that an unsuccessful attempt had been made at the 1899 Conference to regulate maritime warfare. As a result, 'in the domain of maritime law, the standard of might has yet been by no means superseded by the standard of right.' Germany would

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[37] Salisbury to Lascelles, 7 Jan. 1900, ibid., 13; Admiralty to Rear-Admiral Harris, 7 Jan. 1900, Inclosure 1 to Admiralty to Foreign Office, 8 Jan. 1900, ibid., 15. See Harris to Admiralty, 9 Jan. 1900, ibid., 16 (confirming release of the *Herzog*).

[38] Salisbury to Lascelles, 10 Jan. 1900, ibid., 18-19. See Lascelles to Salisbury, 12 Jan. 1900, ibid., 19.

[39] Salisbury to Lascelles, 13 Jan. 1900, ibid., 20.

[40] Salisbury to Lascelles, 16 Jan. 1900, ibid., 20-21.

[41] Salisbury to Lascelles, 17 Jan. 1900, ibid., 21-22.

[42] Hely-Hutchinson to Chamberlain, 18 Jan. 1900, ibid., 22; Lascelles to Salisbury, 19 Jan. 1900, ibid., 23.

support an effort at an international conference 'to regulate, on the one hand, the rights and duties of neutrals, and, on the other, the question of private property at sea' and suggested six provisions to govern seizure and inspection of neutral ships by belligerents. Bülow's proposed provisions suggested acceptance of the doctrine of continuous voyage regarding contraband 'suited for war, and at the same time are destined for one of the belligerents' in return for definite rules on determining the ship's destination. Improper seizures were to result in compensation from the belligerent. He also demanded compensation from Britain for the seizures of the *Bundesrath*, *Herzog*, and *General*.[43] The provisions Bülow proposed closely mirror the articles eventually agreed in the Declaration of London nine years later.[44] The failure to reach an agreement on the laws of naval warfare at the 1899 Conference had contributed to the uncertainties and diplomatic disagreements.

Salisbury also faced pressure regarding the seizure of American-owned cargoes on British or neutral vessels. Britain's position was that foodstuffs bound for a belligerent could only be contraband if they were destined for use by the enemy's forces; the fact they were capable of being so utilized was insufficient. Choate told Salisbury claims likely would be made against Great Britain for damages. Salisbury suggested Britain might purchase the goods from the American owners.[45] Still, he provided little information regarding the status of the seizures. Choate complained about the lack of progress.[46] Salisbury continued to delay and said that while he had received additional information regarding the *Maria* and *Beatrice*, he could not remember it.[47] When Hay suggested the seizure of the *Beatrice*'s cargo conflicted with Salisbury's statement that foodstuffs were not contraband unless intended for the

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[43] Speech by Count von Bülow in the Reichstag on January 19, 1900, Inclosure to Lascelles to Salisbury, 20 Jan. 1900, ibid., 23-26.

[44] See James Brown Scott, ed., *The Declaration of London February 26, 1909* (New York: Oxford University Press, 1919), 117-123, 127 (Articles 22-44, 64).

[45] Choate to Hay, 10 Jan. 1900, *FRUS* 1900, 549-550; Choate to Hay, 12 Jan. 1900, and Inclosure 1 (Salisbury to Choate, 10 Jan. 1900) and Inclosure 2 (Salisbury to Choate, 10 Jan. 1900), ibid., 552-555.

[46] Choate to Hay, 18 Jan. 1900, ibid., 563-565

[47] Choate to Hay, 26 Jan. 1900, ibid., 572-573.

enemy's forces, Salisbury quickly demurred and said he did not intend any departure from his prior statement.[48]

While Salisbury was mulling over the demand for damages,[49] the Royal Navy seized the British steamship *Sabine*, carrying American cargo allegedly destined for the Boers, even though it was to be landed at British ports.[50] Britain quickly released the ship after the US complained. In informing Choate that the ship had been released, Salisbury said the shipment could viewed as 'one continuous voyage' and therefore subject to seizure, but 'his Government did not feel disposed to press that point in this instance.'[51] In early March, Britain offered to purchase the cargo seized from the *Beatrice*, *Maria*, and *Mashona*.[52]

By mid-August, Britain had paid for the seized goods.[53] President McKinley later reported to Congress, 'Vexatious questions arose through Great Britain's action in respect to neutral cargoes, not contraband in their own nature, shipped to Portuguese South Africa, on the score of probable or suspected ultimate destination to the Boer States.' While the incidents had been resolved, the resolution was 'unfortunately, without a broad settlement of the question of a neutral's right to send goods not contraband *per se* to a neutral port adjacent to a belligerent area.'[54] Britain's assertion of the belligerent right of search and seizure against neutral vessels and property, expanding the doctrine of continuous voyage and including food as contraband, had failed in the face of opposition from Germany and the US. Questions

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[48] Hay to Choate, 27 Jan. 1900, ibid., 577; Choate to Salisbury, 29 Jan. 1900, ibid., 578; Choate to Hay, 2 Feb. 1900, ibid., 579-580.

[49] Choate to Salisbury, 6 Feb. 1900, ibid., 585-586.

[50] Hay to Choate, 21 Feb. 1900, ibid., 594; Choate to Hay, 24 Feb. 1900, ibid., 595.

[51] Choate to Hay, 26 Feb. 1900, ibid., 595-596. Salisbury's statement regarding 'one continuous voyage' did not escape official attention. However, because the issues arising from the seizures and detentions were being resolved, the State Department did not indicate its agreement or disagreement with the position. Hay to H. White, 20 Mar. 1900, ibid., 609.

[52] Salisbury to Choate, 3 March 1900, Inclosure 2 to Choate to Hay, 7 March 1900, ibid., 603-605; Foreign Office to Choate, 10 Mar. 1900, Inclosure to H. White to Hay, 15 Mar. 1900, ibid., 608-609.

[53] Adee to Choate, 15 Aug. 1900, ibid., 618-619.

[54] McKinley, 'Annual Message of the President', ibid., xx-xxi.

of the scope of continuous voyage and the status of food as contraband would continue through the 1909 London Conference and have important significance in the First World War.

Theory: The US Naval War Code of 1900

While Britain wrestled with the exercise of belligerent rights against neutrals, the United States prepared a comprehensive code of laws for naval warfare. In October 1899, Lieutenant Commander William Wirt Kimball made 'an unofficial suggestion … respecting the desirability of the promulgation by the Navy Department in some authoritative mode of a body of rules to cover cases of international law of probable occurrence in the experience of a naval officer afloat.' Kimball's suggestion garnered the attention of Secretary of the Navy Long, who referred it to Captain Charles H. Stockton, then president of the US Naval War College. Stockton suggested preparation of a comprehensive naval war code 'substantially upon the lines followed in the case of the' 'Lieber Code' of 1863. Long decided Stockton was 'the man to whom the task of drafting such a document should be assigned.'[55] Stockton's request for assistants was rejected (even Kimball was not interested) and he was left to his own devices to obtain any desired background information for the project.[56]

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[55] Long to Stockton, 2 Nov. 1899, RG 45-VL, box 672, folder 10 (Stockton Collection), NARA(I). Kimball (1848-1930) commanded the Atlantic torpedo boat squadron during the Spanish-American War and rose to the rank of rear admiral. See Chief of Naval Operations, Submarine Warfare Division, 'Submarine Pioneers – Biography for Rear Admiral William W. Kimball, USN', available at http://www.navy.mil/navydata/cno/n87/history/pioneers3.html#William%20W.%20Kimball.

The US Army issued the Lieber Code during the American Civil War and became widely recognized and used as the basis for international laws for the conduct of land warfare. See United States Army, General Order No. 100, *Instructions for the Government of Armies of the United States in the Field*, 24 April 1863, https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/110? OpenDocument.

[56] Stockton to Long, 6 Nov. 1899, RG 45-VL, box 672, folder 10 (Stockton Collection), NARA(I); Lemly to Stockton, 29 Nov. 1899, ibid.; Hay to Long, 2 Dec. 1899, ibid.; Hill to Stockton, 16 Jan. 1900, and following page, ibid. The State Department was especially interested in Stockton's analysis of the treatment of neutral goods and contraband due to the then on-going dispute with Britain over its seizures of merchant ships carrying American goods.

By February 1900, word had gotten out that Stockton was preparing a code of law for naval warfare.[57] Stockton completed his first draft by March 1900. The draft hewed to the United States' traditional positions regarding privateering, capture of enemy merchant ships, and the immunity of private property at sea in time of war. It leaned toward the point of view of a neutral, thereby restricting the freedom of action of the Navy as a belligerent. Article 10 recognized privateers and the crew of vessels sailing under letters of marque as members of the armed forces entitled to treatment as prisoners of war if captured. The draft incorporated the American Civil War concept of 'continuous voyage'.[58] An effective blockade was one 'maintained by a force sufficient to render hazardous the ingress and egress from the port.'[59] This was a more lenient standard than generally recognized, and enabled a 'cruising blockade' consistent with US prize law decisions arising from the Spanish-American War.[60] Stockton also addressed a subject the 1899 Conference had deferred: his draft code limited the right of a belligerent to interrupt submarine telegraph cables to those between belligerents or within the territorial waters of a belligerent. Cables between neutrals or within the territorial waters of neutrals were 'inviolable and free from interruption.'[61]

Stockton solicited comments from Alfred Thayer Mahan and international law professors George G. Wilson, Thomas S. Woolsey, Edward H. Strobel, and John Bassett More.[62] Mahan's comments were surprisingly few and rather mild. On draft Article 20, which embodied the principle of the immunity of private property at sea, Mahan only drew two lines and a large question mark. Regarding neutral vessels carrying mail, Mahan proposed narrowing the scope of the immunity granted and

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[57] Woolsey to Stockton, 14 Feb. 1900, ibid.

[58] Stockton, Draft 'Regulations Respecting the Laws and Usages of War at Sea', copy labeled 'Mahan's Copy returned with comments', ibid.

[59] Ibid.

[60] See *The Olinde Rodriques*, 174 U.S. 510 (1899), in Charles H. Stockton, ed., *Recent Supreme Court Decisions and Other Opinions and Precedents* (Washington, DC: GPO, 1904), 40-58.

[61] See Woolsey to Stockton, Encl., 18 Apr. 1900, ibid.; Strobel, 'Memorandum', encl. to Strobel to Stockton, 12 May 1900, ibid.

[62] See Strobel to Stockton, n.d. (but after 24 Mar. 1900), ibid.; Draft Memorandum, Stockton to Long, May 1900, RG 28, box 5, folder 1, NWCNHC.

thought there should be a broader right of search. Consistent with his failed attempt at the 1899 Conference, Mahan thought that draft Article 26, addressing neutral vessels at sites of sea battles, should be revised to prevent any recurrence of the *Deerhound* controversy. He also questioned draft Article 31, which exempted neutral vessels in convoys guarded by neutral warships. He noted, 'This is a very dangerous concession & in my judgment inopportune.' Mahan's final comment was on the definition of 'conditional contraband'. There he noted, 'In my judgment it is inadvisable to lay down antecedent rules about doubtful contraband.'[63]

The comments and suggestions from the four university professors were far more extensive, although all thought Stockton's work excellent. Like Mahan, Professor Woolsey objected to immunizing neutral ships in convoy from searches, unless provided by a treaty.[64] Professor Wilson wrote a five-page response and agreed with the need for a separate article dealing with submarine telegraph cables.[65] Professor Strobel pointed out that Article 36, which embraced an expanded doctrine of 'continuous voyage', was based on court decisions that had been 'universally condemned'.[66] Professor Moore suggested that any problems regarding the explicit recognition of privateers as members of the armed forces be glossed over by changing draft Article 10 to state, 'The officers and men of all other armed vessels cruising under lawful authority.' Article 12, which allowed crews of captured merchant ships to be treated as prisoners of war, was contrary to the position taken by the US during the Spanish-American War and was based 'chiefly on British authority, and seems to have no admissibility in principle.' He also questioned Article 17, which prohibited a merchant ship from transferring its flag to that of a neutral after leaving port following the commencement of hostilities. This provision was contrary to both English and American precedents dating from the Crimean War. Formal adoption of the expanded concept of 'continuous voyage' in draft Article 36 raised an

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[63] See Stockton, Draft 'Regulations Respecting the Laws and Usages of War at Sea', copy labeled 'Mahan's Copy returned with comments', RG 45-VL, box 672, folder 10 (Stockton Collection), NARA(I).

[64] 'Comments on The Naval War Code', encl. to Woolsey to Stockton, 18 Apr. 1900, ibid.

[65] Wilson to Stockton, 12 Apr. 1900, ibid.

[66] 'Memorandum', encl. to Strobel to Moore, 12 May 1900, ibid.

'exceedingly delicate' question, so Moore suggested dropping the explicit recognition of the concept, saying it was implicit in the clause stating the general rule that ships were subject to seizure 'anywhere' if carrying contraband 'destined for the enemy.'[67]

Stockton defended treating the crew of merchant ships as prisoners of war because such individuals 'in these modern days … are valuable naval resources to a maritime power.' He sent a second draft at least to Moore. Moore now disagreed only with the articles allowing for merchant crews to be treated as prisoners of war and declaring a belligerent merchant ship that transferred its ownership to a neutral as subject to capture. [68]

By 19 May, Stockton had completed revisions in light of the comments he had received, including from Admiral of the Navy George Dewey.[69] Stockton adopted most of the suggestions. Stockton told Secretary Long the proposed code included articles consistent with the United States' positions and laws regarding privateers, the capture of enemy merchant vessels, and the capture and destruction of private property at sea. However, '[i]f the code should be presented to other countries as an international *projet*, it is presumed that those articles would be omitted or modified, in view of our adherence to the Declaration of Paris during the late war and of the stand as to the capture of private property at sea'. The draft code embodied Mahan's positions taken at The Hague regarding the rescue of belligerent seamen by neutral vessels, so 'that the danger of a repetition of the *Deerhound* affair … would be avoided in the future.' The 'formulation and crystallization' of laws of naval war had 'manifest advantages', and would 'tend toward the amelioration of the hardships of naval warfare in general.' Stockton identified twelve advantages arising from the proposed code.[70]

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[67] 'Memorandum', encl. to Moore to Stockton, 28 April 1900, ibid.

[68] See Moore to Stockton, 17 May 1900 (quoting Stockton to Moore, 30 Apr. 1900), ibid.

[69] Dewey's comments have not been located.

[70] See Draft letter, Stockton to Long, 19 May 1900, RG 28, box 5, folder 1, NWCNHC; Naval War College, *International Law Discussions, 1903*, 5-7 (quoting the final letter from Stockton to Long).

Long sent the draft to Secretary Hay for comment. Hay further narrowed the ability of a belligerent to disrupt a submarine telegraph cable between a belligerent and a neutral; limited the right to seize and destroy neutral vessels (subject to the payment of indemnity); and limited the types of repairs a US warship could make after taking shelter in a neutral port during a war. Regarding conditional contraband, Hay added language that only 'provisions when actually destined for the enemy's military or naval forces' would be classified as conditional contraband and therefore subject to seizure.[71] The Navy Department told Stockton it was preparing the final draft incorporating the Department of State's suggestions unless he promptly objected.[72] Stockton apparently did not because President McKinley approved, and Long issued General Order No. 551 on 27 June 1900, promulgating a naval war code for the US Navy.[73] The final version did not substantively vary from Stockton's first draft.[74]

Although the Navy Judge Advocate General stated that the prohibition against the use of false colours in war contradicted several articles of the existing naval regulations,[75] the Code received general acclaim. One American newspaper said the 'general effect of the code is to place [the US] in the position of signatories to the Treaty of Paris.' It concluded, 'Certain rules of the code may appear to restrict our actions unduly, to be more altruistic than rules of war should be; but it must be remembered that if a belligerent declines to treat us as we treat him, we can suspend such rules forthwith.'[76] In an article comparing provisions to existing international

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[71] Hay to Long, 20 June 1900, RG 45-VL, box 672, folder 10 (Stockton Collection), NARA(I). This addition likely was based on the experiences with Great Britain seizing foodstuffs bound for neutral ports in southern Africa.

[72] Hackett to Stockton, 21 June 1900, ibid.

[73] See Charles H. Stockton, *The Laws and Usages of War at Sea: A Naval War Code* (Washington, DC: Government Printing Office, 1901), 3.

[74] Compare Stockton, Draft 'Regulations Respecting the Laws and Usages of War at Sea', copy labeled 'Mahan's Copy returned with comments', RG 45-VL, box 672, folder 10 (Stockton Collection), NARA(I) with Stockton, *A Naval War Code*, 5-27.

[75] Lemly to Stockton, 1 Sept. 1900, RG 45-VL, box 672, folder 10 (Stockton Collection), NARA(I).

[76] 'The Naval War Code', *The Sun* (New York), 20 Aug. 1900, p. 6, cols. 2-3.

understandings, Woolsey concluded the Code was 'modern, clear, enlightened and rational'.[77]

The British ambassador to the US initially requested eight copies, and later asked for three more.[78] *The Times* (London) concluded an article praising the Code, saying, 'This little code of laws deserves to be noted as another product of the US Naval War College, to which we owe Captain Mahan's work on sea power; while in comparison Great Britain is content to spend £200 per annum on a naval strategy course, which includes a lecture on naval history, fee of £5 a lecture.'[79] Oxford international law professor Thomas Erskine Holland identified many areas of agreement between the Code and British positions on naval warfare. He also pointed out that the provisions on continuous voyage agreed with the position Salisbury had recently taken with regard to the seizure of German ships bound for Lourenço Marques. Holland suggested the Code would be a useful template for a similar code for the Royal Navy, which should 'resemble it in clearness of expression, in brevity, and, above all things, in frank acceptance of responsibility.'[80] The Admiralty's parliamentary secretary told Lord Selborne, the new First Lord, that he had 'been much struck by the value of' the US Naval War Code.[81]

If the genesis and birth of the US Naval War Code was fast, its demise was almost as quick. Despite hope it might prove the basis for discussions on an international agreement on maritime warfare, nothing of that nature occurred.[82] Favourable expressions by commentators did not translate into actions on the part of

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[77] Theodore S. Woolsey, 'The Naval War Code', *Columbia Law Review* 1, no. 5 (May 1901): 310.

[78] Chief Intelligence Officer to Chief of the Bureau of Navigation, 15 May 1901, RG 45-VL, box 672, folder 10 (Stockton Collection), NARA(I).

[79] Naval Correspondent, 'A Naval War Code', *The Times* (London), 5 Apr. 1901, p. 8, cols. 2-3.

[80] Holland, 'The United States Naval War Code', *The Times* (London), 10 Apr. 1901, p. 6, col. 2.

[81] Arnold-Forster, 'Minute to First Lord on 15 Questions connected with the Navy', 31 Jan. 1902, Add MSS 50280, H.O. Arnold Forster Papers, Additional Manuscripts, BL.

[82] Holland wrote another letter to *The Times* almost a year later complaining that Britain had taken no action on creation of a comparable code of naval warfare. Holland, 'A Naval War Code', *The Times* (London), 18 Mar. 1902, p. 4, col. 2.

foreign governments or their navies. Efforts in Britain to enact a revised Naval Prize Code failed in 1903.[83] In 1903, the president of the US Naval War College asked the Naval Intelligence Department to query the naval attachés in five countries regarding their views on the Code.[84] The American naval attaché in London believed that Rear Admiral H.J. May at the Royal Naval College was studying the Code. The attaché told the Admiralty there 'are possibilities of mutual benefits' to the countries' navies from 'an interchange of opinions which, though merely academic and carrying no responsibility, may lead to a definite understanding and to official recognition.'[85] Rear Admiral May had indeed been studying the US Naval War Code. However, neither his views nor those of the Admiralty survive.[86] The responses received were non-committal. Neither France nor Germany expressed any criticisms, but they also did not embrace it as a basis for an international agreement. Britain indicated the Code was 'under consideration' and could express no opinion. Only Austria took the position that the Code could serve as the basis for an international naval war code.[87]

In light of the lack of support to use the Code as a basis for an international agreement, the US Naval War College undertook a review of the implications of it to the Navy. Professor Wilson led the 1903 summer international law conferences in assessing the Code. 'The aim of the Conferences was to consider the Naval War Code of 1900 from all points of view, seriously and frankly with reference to its adaptability to the purpose for which it was drawn and its probable effect in case of

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[83] See Brooks, 'Short History of the Progress of the Naval Prize Bill', 15 Dec. 1903, ADM 116/1236, reprinted in Nicholas Tracy, ed., *Sea Power and the Control of Trade: Belligerent Rights from the Russian War to the Beira Patrol, 1854-1970* (Aldershot, UK: Ashgate, 2005), 129-130.

[84] See, for example, Office of Naval Intelligence to Chadwick, 19 May 1903, RG 28, box 5, folder 1, NWCNHC; Chief Intelligence Officer to Chadwick, 22 June 1903, ibid.

[85] Clover to MacGregor, 2 May 1903, ibid. The attaché also stated that in a personal conversation, Captain HSH Prince Louis of Battenberg had expressed interest in the matter.

[86] See 'Laws and usages of war at sea', 25 May 1903, ADM 12/1391. (I am indebted to Dr. Richard Dunley for obtaining a copy of this record for me.)

[87] See Office of Naval Intelligence to Chadwick, 19 May 1903, RG 28, box 5, folder 1, NWCNHC; Office of Naval Intelligence to Chadwick, 8 June 1903, ibid.; Office of Naval Intelligence to Chadwick, 10 June 1903; ibid.; Office of Naval Intelligence to Chadwick, 22 June 1903, ibid.

war to which the United States might be a party.'[88] Because the Code was binding only on the US Navy and contained provisions that were not part of any international agreement or sanctioned by accepted international law, the participants concluded that in a war the Navy would be placed at a disadvantage vis-à-vis its enemy.[89] The summer study recommended that some articles be dropped and most others be amended. The general direction of the recommended changes was to make the Code more 'belligerent friendly' and less 'pro-neutral'.[90] The 'unanimous opinion' of the conference was that: (1) a conference should be called to formulate an international agreement on the conduct of naval warfare; (2) the US Naval War Code should be offered 'as a tentative formulation of the rules which should be considered'; and (3) pending the calling of such an international conference, the Code should be withdrawn as binding on the Navy.[91]

The General Board of the Navy endorsed the recommendations and forwarded them to the secretary of the navy.[92] In January 1904, the General Board reminded the secretary of its previous recommendations.[93] The navy secretary then recommended to President Theodore Roosevelt that the Code be withdrawn. In addition to the points previously made, Secretary of the Navy Moody noted that the article dealing with submarine cables was not part of any international convention and 'greatly favor[s] England. … Unofficial advices from England are to the effect that this tendency of the Naval War Code is well recognized in that country, which owns an overwhelming proportion of the entire submarine cable mileage of the world.' Other provisions were contrary to accepted practices or had never been generally adopted. In conclusion, Moody said the 'immediate reason' for asking that the Code be withdrawn was 'the possibility of war in the Far East. The Naval War Code, in so far as it differs from the accepted usage of international law, does not so much affect

[88] Wilson to Chadwick, 7 Oct. 1903, RG 80, box 167, folder 438-7, NARA(I). See generally Naval War College, *International Law Discussions, 1903*, 13-97.

[89] Wilson to Chadwick, 7 Oct. 1903, RG 80, box 167, folder 438-7, NARA(I).

[90] See Naval War College, *International Law Discussions, 1903*, 91-97.

[91] Wilson to Chadwick, 7 Oct. 1903, RG 80, box 167, folder 438-7, NARA(I).

[92] Chadwick to Moody, 8 Oct. 1903, ibid.; General Board, Endorsement, 30 Oct. 1903, ibid.

[93] See Loomis to Moody, 13 Jan. 1904, ibid.; General Board, Endorsement, 29 Jan. 1904; ibid.

the duties of neutrals, as it limits the rights of belligerents.' The Code therefore should be withdrawn now, before war occurred.[94] President Roosevelt agreed, and on 4 February 1904, the US Naval War Code was revoked.[95]

Theory: Protecting Merchant Ships and Food Supplies

As the war in South Africa wound down, Britain's attention returned to the protection of merchant ships and food supplies during war.[96] Protecting its food supply was a life and death matter for Britain given its dependence on imports to feed its population. Goschen's successor as first lord of the admiralty, Lord Selborne, sought more money for commerce protection.[97] In January 1902, the parliamentary and financial secretary to the Admiralty told Selborne the question of the safety of the food supply was of 'vital importance', but no real consideration of it had been undertaken.[98] HSH Captain Prince Louis of Battenberg asserted in late March 1902 to Fisher, who still commanded the Mediterranean fleet, 'Commerce Protection is

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[94] Moody to T. Roosevelt, 30 Jan. 1904, ibid.

[95] T. Roosevelt to Moody, 31 Jan. 1904, ibid.; Moody, General Order No. 150, 4 Feb. 1904, ibid.

[96] The president of the board of trade had raised the issue of the protection of the food supply in June 1898. See Ritchie, 'Food Supply in Time of War', 9 June 1898, CAB 37/47/40. Goschen later requested increased funding to provide better armaments on mercantile cruisers. Goschen, 'Rearmament of Mercantile Auxiliary Vessels and provision of Improved Field Guns for Ships', 15 Oct. 1900, CAB 37/53/69. Not surprisingly, Chancellor Hicks Beach questioned the value of Goschen's proposal. Hicks Beach to Salisbury, 21 Oct. 1900, D2455/X4/1/1/13, Hicks Beach Papers.

For a consideration of the Royal Navy's discussions and planning regarding arming auxiliary ships for offensive purposes, see Cobb (2013), 131-239.

[97] See, for example, Selborne, 'Navy Estimates, 1901-1902', 17 Jan. 1901, CAB 37/56/8; Selborne, 'Navy Estimates, 1902-1903', 7 Dec. 1901, CAB 37/59/127.

Salisbury appointed his son-in-law, William Waldegrave Palmer, second earl of Selborne, first lord of the admiralty on 1 November 1900. During Selborne's tenure, his focus changed from France and Russia to Germany as the most likely opponent in war. Matthew Seligmann, 'Switching Horses: The Admiralty's Recognition of the Threat from Germany, 1900-1905', *The International History Review* 30, no. 2 (June 2008): 238-258; Keith Wilson, 'Directions of Travel: The Earl of Selborne, the Cabinet, and the Threat from Germany, 1900-1904', *The International History Review* 30, no. 2 (June 2008): 259-272.

[98] Arnold-Forster, 'Minute to First Lord on 15 Questions connected with the Navy', 31 Jan. 1902, Add MSS 50280, H.O. Arnold Forster Papers, Additional Manuscripts, BL.

about the most burning question for those in authority to settle.'[99] Over the next several years, Battenberg played an important role regarding analysis of the laws of naval warfare and arming merchant ships for defensive purposes and protecting the supply of food during war.

In January 1902, Battenberg prepared remarks on commerce protection in war after hearing lectures on the subject that Fisher forwarded to the Admiralty.[100] DNI Custance thought Battenberg's proposals too ambitious and 'unsuited to the conditions' that would exist in war.[101] One of Battenberg's suggestions raised the question of whether merchant ships should be armed in self-defence.[102] The Admiralty thought the issue important enough to ask the Law Officers for an opinion.[103] Their succinct response was that while non-commissioned ships could be armed and resist capture, they should exercise caution assisting other merchant vessels attacked by the enemy lest the non-commissioned merchant ship become 'a cruiser of a very irregular description'. The only legal consequence might be that any neutral cargo on board could be forfeited. However, from a non-legal perspective, the opposing ship might destroy the non-commissioned merchant vessel, take its crew as prisoners, or 'proceed to more vigorous measures based on the allegation of unauthorized belligerency.'[104] The Admiralty sent copies of the opinion to all fleet

[99] Battenberg to Fisher, 29 Mar. 1902, *FISR* 1/3 (emphasis in original). Battenberg urged Fisher to accomplish something regarding the issue once he joined the Board of the Admiralty as second naval lord in a few months. See ibid. Fisher considered Battenberg one of 'the two best officers in the whole British Navy'. Fisher to Selborne, 5 Jan. 1901, *FGDN* I, 176.

[100] Battenberg, 'Commerce Protection in War', 7 Jan. 1902, ADM 1/7628; Fisher to Admiralty Secretary, 9 Jan. 1902, ibid.

[101] Custance, Minute, 24 Jan. 1902, ibid.

[102] Battenberg, 'Commerce Protection', 7 Jan. 1902, ibid., 3.

[103] Custance, Minute, 24 Jan. 1902, ibid.; Kerr, Minute to DNI, 27 Jan. 1902, ibid.; Custance, Minute, 28 Jan. 1902, ibid.; Kerr, Minute, 31 Jan. 1902, ibid.; Selborne, Minute, 3 Feb. 1902, ibid.; 'Commerce Protection in War: Arming of Merchant Vessels, Case for the Opinion of the Law Officers', 14 Mar. 1902, ibid.

[104] Finlay and Carson, Opinion, 14 Mar. 1902, ibid. 'Vigorous measures' likely referred to treating the crew as pirates.

commanders and to the Foreign, India, and Colonial offices, and the Board of Trade.[105]

Fisher solicited Battenberg's views after receiving the opinion and again forwarded his comments to the Admiralty.[106] Battenberg recommended the decision about whether to arm merchant ships should be left to the ship owners, who likely would decide not to arm. He thought the 'awkward point about all questions of international law is that whatever one's own interpretation may be, what finally settles the matter is the interpretation put upon it by the enemy.' He believed a captured crew might be treated as pirates, not prisoners.[107] Assistant DNI Captain Edward F. Inglefield disagreed and noted, 'it has hitherto been customary to detain the Crews of captured Merchant Vessels as Prisoners of War whether they have resisted capture or not.'[108] Thus, he believed belligerents would follow recognized principles of international law in wartime. He also thought ship owners would not arm their vessels themselves without a 'considerable reduction' in war insurance, which could not be predicted without actual experience.[109] Custance agreed with Inglefield's analysis.[110] Selborne and Kerr also concurred that responsibility for arming merchant ships rested with their owners. Therefore, the Admiralty decided that non-commissioned merchant ships should not be armed as a matter of naval policy.[111]

Succeeding Custance as DNI in November 1902,[112] Battenberg re-joined Fisher, who had become Second Naval Lord in June. Fisher was pleased at Battenberg's appointment and enjoyed his confidence at this time. As DNI, Battenberg 'exercised a material influence on Admiralty policy – an influence at once moderate and constructive.' Fisher spent '[o]nly a fraction' of his time at the

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[105] Admiralty Secretary, Minute, 12 Apr. 1902, ibid. Kerr minuted regarding the opinion, 'I don't feel that we are much the wiser.' Kerr, Minute, 12 Apr. 1902, ibid.

[106] Fisher to Admiralty Secretary, 14 May 1902, ibid.

[107] Battenberg, Memorandum, 14 May 1902, ibid.

[108] Inglefield, Minute, 28 May 1902, ibid.

[109] Ibid.

[110] Custance, Minute, 28 May 1902, ibid.

[111] Kerr, Minute, 11 June 1902, ibid.; Selborne, Minute, 10 June 1902, ibid.

[112] Cobb (2013), 268-269.

Admiralty on personnel and training, his area of responsibility as Second Naval Lord.[113] Although he left the Admiralty in August 1903 to become commander-in-chief at Portsmouth, he and Battenberg likely discussed issues relating to commerce protection, including issues of international law given the prominence of the topic at the time.[114]

Battenberg's attention soon was again focused squarely on commerce protection, this time regarding the supply of food during war. In light of continuing discussions and concerns about Britain's ability to protect its food supply, Balfour, who had succeeded his uncle as Prime Minister in July 1902, agreed to the appointment of a royal commission to study the issue.[115] In April 1903, King Edward VII appointed a royal commission in part 'to advise whether it is desirable to adopt any measures, in addition to the maintenance of a strong Fleet, by which such supplies can be better secured and violent fluctuations avoided.'[116] The Royal Commission sought the Admiralty's views on subjects related to its remit, including the implications of the laws of naval warfare on protecting the supply of food and raw materials during war. The Admiralty's answers to the questions presented, as well as the testimony of Battenberg and assistant DNI Inglefield, reveal not only the Admiralty's views on this important subject,[117] but also surely something of Fisher's.

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[113] Mackay (1973), 255-257, 276.

[114] Fisher's continuing attention to commerce protection is shown, for example, by a submission to Balfour in which he wrote in typical style, 'Stop the incoming of food for a week or two: what *can* the Army do? The country *must* capitulate! As the French Admiral said "*An empty belly is more powerful than Patriotism. … The British Empire floats on the British Navy!*"' Fisher, 'A Brief Precis of the Principal Considerations that must Influence our Future Naval and Military Policy', 1903 (with handwritten notation 'ca. 19 Oct. 1903'), Add MSS 49710, #2, *AJB/BL* (emphasis in original).

[115] Cobb (2013), 59-60, 92.

[116] Royal Commission on Supply of Food and Raw Material in Time of War, *The Report*, vol. I of *Report of the Royal Commission on Supply of Food and Raw Material in Time of War* (London: HMSO, 1905), ix (hereafter *Royal Commission Report*).

[117] Cobb (2013), 92.

Battenberg recognized the Royal Navy had a duty to protect the nation's commerce from marauding enemy cruisers.[118] But how might international law affect the Royal Navy's 'duty' to protect merchant ships, if at all? In August 1903, the Royal Commission sent twelve questions on which it wanted to examine Battenberg.[119] Question 12 asked for the Admiralty's 'attitude towards International Law in time of war', particularly regarding provisions on contraband, privateering, and 'arming fast ships for the destruction of commerce'.[120]

The Admiralty's written responses were provided on 3 November 1903.[121] The Admiralty first provided a lengthy historical review followed by a comparison showing Britain's preponderance over France and Russia in cruisers. The Admiralty declined to directly address question 12, saying Britain's 'attitude with regard to questions of International Law will depend on the circumstances which may then arise, but of which no forecast can be made beforehand.' This response could be read as either the Admiralty intended to violate international law in the event of war, or it expected international law to apply unless the enemy violated it, in which case Britain would not have to adhere itself. However, international law was a factor in the Admiralty's answers, which suggests the Admiralty was planning for the latter and not the former scenario. Because no guarantee existed that the enemy would violate international law, planning assumed its applicability. According to the Admiralty, Britain needed more fast merchant ships that could be converted for commerce destruction. The restrictions that neutral nations would 'feel bound' to impose on the use of their ports by belligerents would 'by limiting the operations of hostile commerce-destroyers, prove an advantage to Great Britain.' Privateering, having been abolished by the Declaration of Paris, was of no concern. The law officers' opinion relating to arming non-commissioned merchant ships was repeated, with the additional observation that unarmed merchant ships would be more inclined to run

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[118] Battenberg, Memorandum, 4 Mar. 1903, ADM 137/2872.

[119] Battenberg, Minute, 18 Aug. 1903, ibid.

[120] Admiralty, 'Memorandum on the Protection of Ocean Trade in War Time', Oct. 1903, copy in CAB 17/3, 3-4.

[121] See Royal Commission on Supply of Food and Raw Material in Time of War, *Minutes of Evidence*, vol. II of *Report of the Royal Commission on Supply of Food and Raw Material in Time of War* (London: HMSO, 1905), 237, Q.6802 (hereafter *Royal Commission Evidence*).

than take a chance on fighting an enemy ship. An effective blockade of England was deemed virtually impossible. The critical issue was the question of what was and was not contraband, especially regarding food. The Admiralty believed that 'the question of contraband will be decided more by might than right, and it is doubtful if any belligerent Power would persist in declaring food contraband if an interested and strong neutral, such as the United States, protested and prepared to fight.'[122] Apparently the Royal Navy did not believe that Britain would have the 'might' to resist protests at least from the US.

In his testimony before the Royal Commission, Battenberg agreed a definition of contraband was needed and that Salisbury's *de facto* adoption of the American Civil War concept of continuous voyage during the South African War was consistent with the modern trend. He testified the Admiralty was preparing its plans assuming that the laws of naval warfare would apply and be followed, saying, 'I think one expects it. It is rather difficult to see how civilized warfare can be carried on unless you assume that.' The one exception was the definition of contraband of war, which would be 'whatever the strongest party chooses to make it'.[123]

Professor Holland, who also was a member of the Commission, testified that the principle of the inviolability of private property at sea during war was the growing trend in international law. He noted the US Naval War Code prohibited the search of neutral vessels in convoy guarded by a neutral warship, and Britain essentially stood alone in opposition to that rule. He reiterated the need for an accepted definition of contraband and agreed with Salisbury's adoption of the doctrine of continuous voyage. Like the Admiralty, Holland placed emphasis on neutrals restraining a belligerent from failing to adhere to international law. Belligerents 'would not wish to incur the ill opinion of other nations, even apart from the question of a neutral making war upon them.' The need to place prize crews on captured neutral ships according to international law would prevent a belligerent from destroying such ships,

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[122] Admiralty, 'Memorandum', CAB 17/3, 5-14, 20, 27.

[123] Battenberg Testimony, 5 Nov. 1903, ADM 137/2872, QQ.13-14, 98-100. Battenberg's testimony before the Royal Commission was kept secret. See *Royal Commission Report*, 27, ¶118. A copy of his evidence, however, is in ADM 137/2872. Stephen Cobb reaches the same conclusion regarding the import of Battenberg's testimony. See Cobb (2013), 93.

because the size of modern warships limited space for prize crews and captured merchant crewmen. Critically, Holland agreed, 'that the weight of all British authority should be thrown in the direction of a high standard of maintaining those [international] rules which are agreed to'. [124]

Assistant DNI Inglefield testified as a private individual with the approval of the Admiralty to present his scheme of national indemnity for merchant ships during war. However, he did not escape questions regarding the impact of international law. Inglefield adhered to the Admiralty's position that might would make right regarding the definition of contraband and the more powerful nation would define contraband as it desired, even including food as contraband. However, he agreed international law could not simply be ignored, saying, 'I think that in the main there is no question but that international law is bound to hold good, and we could not get on without it.'[125]

In its final report, the Royal Commission relied considerably on limitations on naval warfare being applied and enforced to support its conclusion that Britain's supply of food during war was safe. However, while some aspects of international law were so widely accepted they certainly would be followed, others were not so widely observed. The Commission 'desire[d] to see the binding force of [international law's] prescriptions strengthened and not weakened'. The primary goal in naval warfare of gaining command of the sea would take precedence over commerce destruction. But the Admiralty could not guarantee it could successfully protect all of Britain's sea-borne trade. Even if the main strategic goal was not followed, international law was 'one of the factors which will contribute in an important degree to the maintenance of [Britain's] security by placing restrictions upon the operations of our enemies.' The Commission also emphasized properly constituted international prize courts, which 'would uphold International Law to the best of their ability. The legal members of such Courts … might place an effectual check on breaches of International Law by cruisers. … International Law as the morality governing the relations of States, will exercise a very considerable restraining influence upon the acts of nations.' Belligerents would be restrained from

[124] Holland Testimony, 4 Nov. 1903, *Royal Commission Evidence*, 236, Q.6788; 239, Q.6865.

[125] Inglefield Testimony, 5 Nov. 1903, ibid., 259, QQ.7292-7294.

destroying neutral ships by the requirements of safeguarding the merchant crewmen and the need to provide prize crews. Neutrals would play an important role in limiting breaches of international law, including attempts to broadly define contraband to include food. Indeed, the greater the number of neutrals supplying Britain during war, the safer its commerce.[126] Thus, the positions of the Admiralty, the testimony of witnesses, and the analysis and conclusions of the Royal Commission, reveal the relevance and importance of the laws of naval warfare to strategic planning. The Commission's recommendation for a national indemnity scheme for ships captured by the enemy during war generated the most public comment and debate following the release of its report. Indeed, the Admiralty was involved with discussions relating to such a plan or national insurance off and on up to the eve of the First World War.[127]

Practice: The Russo-Japanese War

In early February 1904 Japan made a surprise attack on Russia's naval base at Port Arthur in Manchuria – a violation of accepted international law. Britain and the US were neutrals in the conflict, although because of its alliance with Japan since 1902, Britain would have been compelled to enter the war on Japan's side if another nation entered on Russia's side. Within days, Russia and Japan issued declarations defining contraband and stating rules for the treatment of neutral vessels and cargoes. Japan's declaration stated that provisions and coal were conditional contraband and subject to seizure only if destined for use by the enemy's forces.[128] However, Russia's declaration, while playing lip service to the Declaration of Paris and

[126] *Royal Commission Report*, 25-26, 30, 34, 58, ¶s109-111, 126, 130-131, 146, 248-249. Professor Holland dissented in part from the final report. He thought greater reliance should be placed on international law as restricting naval warfare and thereby protecting Britain's merchant marine commerce. See ibid., 106, ¶5.

[127] Cobb (2013), 217-222.

[128] MacDonald to Lansdowne, 17 Feb. 1904, in Foreign Office, *Correspondence Respecting Contraband of War in Connection with the Hostilities Between Russia and Japan* (Russia No. 1 (1905)) (London: HMSO, 1905) (hereafter *Correspondence Russia No. 1*), 1. For a broad perspective on Anglo-Russian relations during 1904, see Keith Neilson, '"A Dangerous Game of American Poker": The Russo-Japanese War and British Policy', *The Journal of Strategic Studies* 12, no. 1 (Mar. 1989): 63-87.

accepted international law generally, declared food and coal, among other items, as absolute contraband.[129]

Foreign Secretary Lord Lansdowne[130] asked Ambassador Scott to confirm that Russia considered food and coal absolute contraband. Russia's foreign minister confirmed those items were absolute contraband subject to seizure even on board neutral ships. Moreover, Russia reserved the right to expand the list of absolute contraband.[131] The Admiralty then asked whether Russian warships should be allowed to re-supply with coal in British ports. Lord Lansdowne concluded Russian warships could be re-supplied, unless it was decided to deny this right in retaliation for Russia's declaration.[132] Russia's declaration of food as absolute contraband generated an historical review by the Law Officers, who pointed out that Britain and the US had maintained inconsistent positions on the subject since the late eighteenth century.[133] The Law Officers told Lansdowne, 'The enormous importance to this country of maintaining the rule that food is *not* contraband, unless the inference can be properly drawn that it is for the use of the enemy's forces, or of a besieged town, cannot be lost sight of in considering the propriety of sending a protest'.[134] Lansdowne decided a protest should be drafted and submitted to the prime minister for consideration.[135]

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[129] Scott to Lansdowne, 29 Feb. 1904, ibid. See generally Scott, 'Memorandum on Russian Regulations respecting Contraband of War', 29 Feb. 1904, CAB 4/1/1, ff. 66-67.

[130] Henry Petty-Fitzmaurice, fifth marquess of Lansdowne, succeeded Salisbury as secretary of state for foreign affairs in November 1900. He continued in office until early December 1905. For a discussion of his role as foreign secretary and naval matters, see William Mulligan, 'From Case to Narrative: The Marquess of Lansdowne, Sir Edward Grey, and the Threat from Germany, 1900-1906', *The International History Review* 30, no. 2 (June 2008): 273-302.

[131] Lansdowne to Scott, 3 Mar. 1904, *Correspondence Russia No. 1*, 5; Scott to Lansdowne, 7 Mar. 1904, ibid., 5-6; Lamsdorff to Scott, 7 Mar. 1904, Inclosure to Scott to Lansdowne, 14 Mar. 1904, ibid., 6.

[132] Admiralty to Foreign Office, 4 Mar. 1904, CAB 4/1/1, f. 57; Admiralty to Foreign Office, 8 Mar. 1904, ibid.; Foreign Office to Admiralty, 8 Mar. 1904, ibid., f. 58; Foreign Office to Admiralty, 14 Mar. 1904, ibid.

[133] Oakes, 'Memorandum', 7 Mar. 1904, ibid., ff. 68-69.

[134] Law Officers to Lansdowne, 26 Mar. 1904, ibid., f. 69 (emphasis in original).

[135] Lansdowne, Minute, 26 Mar. 1904, ibid.

Secretary of State Hay declined British solicitations to join in a protest, preferring to act alone.[136] The US issued a general declaration that food was contraband only if destined for enemy forces or besieged towns.[137] However, Russia's next announcement did generate a formal protest. Russia declared that journalists who communicated war news by wireless to Japan off the coast of China or within the zone of Russian operations would be arrested, treated as spies, and the ships on which they operated seized. The US immediately objected.[138] Undeterred, Russia upped the ante by declaring raw cotton absolute contraband.[139]

Russia's expansion of belligerent rights had reached the point where neither the US nor Great Britain could remain silent. Britain protested that Russia's classification of food as absolute contraband was 'inconsistent with the law and practice of nations.' Moreover, any decisions of Russian prize courts, in order to be binding, 'must be in accordance with recognized rules and principles of international law.'[140] Russia responded there was no international agreement defining contraband and so it was 'within the power of a belligerent to arbitrarily decide what articles were to be so considered'.[141] The US objected to Russia's identification of provisions, coal, and raw cotton as absolute contraband. Russia's declaration 'would not appear to be in accord with the reasonable and lawful rights of a neutral commerce.'[142]

Britain also reconsidered its decision to supply coal to Russia. The Committee of Imperial Defence (CID) recognized that the country, 'if a belligerent, would gain

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[136] Hay Diary, 5 and 10 Mar. 1904, reel 1, container 1, Hay Papers.

[137] See Maycock to Foreign Office, 1 Mar. 1904, CAB 4/1/1, f. 67 (quoting American declaration).

[138] Cassini to Hay, 15 Apr. 1904, *FRUS* 1904, 729; Hay to Cassini, 20 Apr. 1904, ibid.

[139] McCormick to Hay, 21 May 1904, ibid., 730; Spring-Rice to Lansdowne, 9 May 1904, *Correspondence Russia No. 1*, 8; Lansdowne to Hardinge, 16 May 1904, ibid.; Hardinge to Lansdowne, 17 May 1904, ibid.

[140] Lansdowne to Hardinge, 1 June 1904, ibid., 9-10.

[141] Hardinge to Lansdowne, 8 June 1904, FO 46/625, ff. 25-26.

[142] Hay to Ambassadors of the United States in Europe, 10 June 1904, *FRUS* 1904, 730-732.

by the recognition of coal as contraband of war.'[143] The Law Officers advised that coal could be denied to Russian ships on their way to the war zone.[144] A sub-committee of the CID agreed, and also recommended that belligerents who laid floating mines on the high seas should be held responsible for any damage to neutral ships.[145] Lansdowne asked Ambassador Choate for the United States' view on coal and received a response that simply repeated its earlier position statement sent to its European ambassadors.[146] Lansdowne's draft response to Choate indicated Britain was not going to formally protest Russia's position on coal.[147] However, intervening events hardened the positions of both nations.

On 24 July a Russian warship sank the British merchant ship *Knight Commander* after removing its crew, allegedly because the merchantman did not have sufficient coal to get to the Russian prize court at Vladivostok. An American company had chartered the *Knight Commander* and it carried American cargo. Russia also seized the German steamship *Arabia* off the coast of Japan, also carrying American cargo, and the *Ardova* in the Red Sea, carrying munitions bound for the US government in the Philippines.[148] Although the US had been content to allow Britain to take the labouring oar vis-à-vis Russia's assertion of broad belligerent rights,[149] Russia's actions incensed President Theodore Roosevelt. He asked the US Navy and Secretary Hay to prepare to send the Asiatic fleet to 'bottle up the Vladivostok

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[143] Clarke, 'Imperial Defence Committee. Note on discussion of 1st June 1904', Add MSS 50836, George Sydenham Clarke Papers, BL, f. 39 (hereafter 'Clarke Papers'). See also Clarke, 'Supply of Coal to Belligerents', 11 May 1904, ibid., ff. 45-49 (stating the attitude of the US and France on supplying coal had caused Britain to reconsider its position); CID, Minutes, 10 Aug. 1904, CAB 2/1/53, f. 101.

[144] Foreign Office to Law Officers, 3 June 1904, CAB 4/1/1, ff. 69-70; Law Officers to Lansdowne, 6 June 1904, ibid., ff. 70-72.

[145] 'Note of Conclusions arrived at by the Sub-Committee appointed to consider certain Questions of International Law arising out of the Russo-Japanese War', n.d. (ca. June 1904), ibid., ff. 72-73. See also CID, Minutes, 1 June 1904, CAB 2/1/44, f. 88; CID, Minutes, 17 June 1904, CAB 2/1/46, ff. 90-91.

[146] Choate to Lansdowne, 25 June 1904, CAB 4/1/1, f.93.

[147] Lansdowne, Draft Note to Choate, July 1904, ibid., f. 94.

[148] Cobb (2013), 74, note 63; Coogan (1981), 46; Adee to Eddy, 27 July 1904, *FRUS* 1904, 732; Adee to Eddy, 27 July 1904, ibid.; Loomis to Eddy, 30 July 1904, ibid., 734.

[149] Loomis to Hay, 28 July 1904, reel 19, Hay Papers.

Russian squadron' if Russia should seize an American vessel.[150] The US viewed 'with the gravest concern' the sinking of the *Knight Commander* and the seizure of American-owned cargoes. The country reserved 'all rights of security, regular treatment, reparation' for American cargo and ships.[151] Like Salisbury during the South African War, Russian Foreign Minister Lamsdorff told the American ambassador he had no information regarding the decision of the prize court relating to the *Arabia*, although Russia had properly seized the ship.[152]

Britain's attorney general told the CID the sinking of the *Knight Commander* constituted 'a breach of international law and custom.'[153] Britain promptly decided to refuse coal to belligerent warships on their way to the war zone.[154] Russia was 'unprepared' for this decision.[155] Britain also sent two strongly-worded notes, calling Russia's extension of absolute contraband to include food, coal, and raw cotton 'unprecedented', decrying the destruction of the *Knight Commander*, demanding Russia change its classification of absolute contraband and cease seizing neutral ships carrying neutral goods, and questioning the validity of the decisions of Russian prize courts. Lansdowne described Russia's actions as 'contrary to acknowledged principles of international law, and so intolerable to all neutrals.'[156] Russia's foreign minister said the issues were complex and sought to buy time by referring them to a special commission for review and that Russian prize law 'had been misinterpreted'. Britain's new ambassador concluded that 'the firm and uncompromising attitude of

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[150] Roosevelt to Pillsbury, 29 July 1904, in Elting E. Morison, ed., *The Square Deal, 1903-1905*, vol. IV of *The Letters of Theodore Roosevelt* (Cambridge, MA: Harvard University Press, 1951), 869; Roosevelt to Hay, 29 July 1904, ibid.

[151] Loomis to Eddy, 30 July 1904, *FRUS* 1904, 734.

[152] McCormick to Hay, 10 Aug. 1904, ibid., 755.

[153] CID, Minutes, 27 July 1904, CAB 2/1/52, f. 99.

[154] Admiralty to Foreign Office, 5 Aug. 1904, *Correspondence Russia No. 1*, 10; Foreign Office to Admiralty, 8 Aug. 1904, ibid., 11; CID, Minutes, 15 Aug., 1904, CAB2/1/54, f. 103.

[155] Lansdowne to Hardinge, 16 Aug. 1904, *Correspondence Russia No. 1*, 14-15.

[156] Lansdowne to Hardinge, 10 Aug. 1904, ibid., 11-12; Lansdowne to Hardinge, 10 Aug. 1904, ibid., 13-14.

the British and American governments on the subject of the definition of contraband of war have had a certain effect' and that Russia might soon change its positions.[157]

However, Russia's positions were not changing quickly enough. The Chamber of Shipping complained that British ships were being stopped and searched far from the war zone, including in the Bay of Biscay and the approaches to the western Mediterranean.[158] Britain complained its ships were being stopped, searched, and even seized disproportionately compared with other nation's merchant vessels far from the war zone. Russian prize courts appeared to have little understanding of the proper relations of belligerents to neutrals. Lamsdorff denied that any discrimination toward British merchant ships was occurring and again delayed any substantive reply, saying a special commission still was considering the various issues.[159] The US then denounced Russia's interpretation of contraband and criticized the procedure and reasoning of its prize courts. Those decisions meant 'the complete destruction of all neutral commerce'; 'obviates the necessity of blockades;' 'renders meaningless the principle of the declaration of Paris' that blockades must be effective; 'obliterates all distinction between commerce in contraband and noncontraband goods; and is in effect a declaration of war against commerce of every description between the people of a neutral and those of a belligerent State.'[160]

At the same time, the Admiralty considered the implications of these issues for future wars. The primary concern was the area or zone within which a belligerent could search neutral vessels for contraband. Lansdowne asserted, 'the area of search must have some reference to the geographical position of the theatre of war.' He asked First Lord Selborne to consider the question of geographical limits, and reminded him of Salisbury's instructions following seizure of the *Bundesrath* that no merchant ship would be stopped a certain distance from Lorenço Marques.[161] Prime Minister Balfour expressed concern that 'We are in some danger of finding ourselves

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[157] Hardinge to Lansdowne, 16 Aug. 1904, FO 46/629, ff. 49-51.

[158] Chamber of Shipping to Lansdowne, 19 Aug. 1904, ibid., ff. 14-16.

[159] Hardinge to Lansdowne, 27 Aug. 1904, *Correspondence Russia No. 1*, 17.

[160] Hay to McCormick, 30 Aug. 1904, *FRUS* 1904, 760-763.

[161] Lansdowne to Selborne, 31 Aug. 1904, MS. Selborne 40, ff. 36-37, Papers of William Waldegrave Palmer, second earl of Selborne, Bodleian Library, Oxford, UK (hereafter 'Selborne Papers').

in the position to which reference has so often been made in Cabinet, that, namely, of submitting as neutrals, to conditions more onerous to our trade than those which we impose on belligerents.'[162] An inter-department committee of the Admiralty and Foreign Office concluded that Salisbury's action was not binding precedent. However, the committee opposed proposing zones of search. 'The chief reason against the proposal … was the consideration that if [Britain] were at war with (say) France, we should want to stop coal or munitions of war from reaching France or the French fleet anywhere and everywhere'.[163] Selborne disagreed. If Salisbury's action was not precedent, then he had erred when he conceded the point to Germany. However, 'in the most conceivable cases in which [Britain] might be concerned as belligerents in a war with a great Maritime Power, the precedent could not be invoked in such a manner as to cause us any inconvenience.' The potential wars Selborne considered were against Russia, France, Germany, and the United States. The Admiralty had not considered the more salient question 'that any restrictions which we now impose upon Russia will tie our own hands hereafter whenever we appear upon the scene as belligerents.'[164] Lansdowne agreed 'if our trade could be guaranteed immunity except in certain waters during this war, while we are neutrals, we should reap considerable immediate advantage.' He thought further discussion was in order.[165]

Russia had started to change its positions on contraband and the search and seizure of neutral ships in the face of pressure from neutrals and the analysis of Professor F.F. Martens, who had chaired a special commission to study the issues. It now claimed its regulations on contraband had been misinterpreted, and food was

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[162] Balfour to Clan, 6 Sept. 1904, Add MSS 49728, *AJB/BL* (emphasis in original).

[163] Campbell to Lansdowne, 6 Sept. 1904, Inclosure to Lansdowne to Balfour, 8 Sept. 1904, ibid.

[164] Lansdowne to Selborne, 9 Sept. 1904, MS. Selborne 40, ff. 57-58, Selborne Papers; Lansdowne to Selborne, 9 Sept. 1904, ibid., ff. 60-61.

[165] Lansdowne to Selborne, 23 Sept. 1904, ibid., ff. 62-64. Selborne thought an agreement with Russia on a zone of search was possible, and 'that the precedent thus created need not be detrimental to [Britain], because if we found ourselves at war with any other great naval Power [such as France] it would be virtually impossible to apply the zone system at all.' However, the Foreign Office could not approach Russia with a proposal because the Admiralty and the Board of Trade could not reach decisions on the matter. Lansdowne to Balfour, 30 Sept. 1904, Add MSS 49728, *AJB/BL*.

conditional contraband that could be seized if the captor proved the goods were destined for the enemy.[166] However, Russia still claimed coal and raw cotton were absolute contraband despite continued objections from the US and Britain.[167] Somewhat disingenuously given its actions during the South African War, Britain asserted, 'that to take vessels for adjudication merely because their destination is the enemy's country would be vexatious, and constitute an unwarrantable interference with neutral commerce.'[168] Questionable seizures of British and American merchant ships ceased as Russia assured that 'in the future there will be less ground of complaint'. The US monitored Russian prize court decisions and told Russia the questionable nature of those decisions could not be considered precedents or consistent with the law of nations.[169]

Conclusion

For Great Britain and the Royal Navy, the practical and theoretical experiences between 1899 and 1905 had a far-reaching impact. Britain withdrew from its pro-belligerent rights stance adopted during the early months of the South African War in response to pressure from the US and Germany. Salisbury's expression of 'regret' to Germany had to be galling. Coogan asserts that Britain's retreat on belligerent rights during the South Africa War had a generational effect that left the nation's leaders with 'unpleasant memories' of the 'difficulties of enforcing belligerent rights under modern conditions.'[170] The events of the Russo-Japanese War strikingly parallel those of the South Africa War. Russia's definition of contraband and its seizure and destruction of neutral ships and cargoes went beyond accepted international maritime law and created contentious issues with neutral

[166] Hardinge to Lansdowne, 16 Sept. 1904, *Correspondence Russia No. 1*, 19; Hardinge to Lansdowne, 16 Sept. 1904, ibid., 19-20. Martens had represented Russia at the 1899 Conference.

[167] Hardinge to Lansdowne, 21 Sept. 1904, ibid., 21; Hardinge to Lamsdorff, 9 Oct. 1904; McCormick to Hay, 21 Sept. 1904, *FRUS* 1904, 767-768; McCormick to Hay, 29 Sept. 1904, ibid., 770-771.

[168] Lansdowne to Hardinge, 30 Sept. 1904, *Correspondence Russia No. 1*, 21-22.

[169] Hay to McCormick, 13 Jan. 1905, *FRUS* 1905, 744-748.

[170] Coogan (1981), 42. Nicholas Lambert makes a similar assertion, albeit in summary fashion and completely ignoring the role of the US in the South African War. N. Lambert (2012), 67-68.

powers. Russia finally yielded to the protests of Britain and the US. Thus, in two successive conflicts involving major sea powers, international law had prevailed over the actions of a belligerent. Although both were regional wars, the principles enforced were applicable in any conflict regardless of its size or duration. Britain's success in forcing Russia to comply with international standards reinforced those in the government who viewed the country's traditional position as shifting toward that of neutrals. The presumption 'might makes right' or that a belligerent could announce whatever rules it wanted for the treatment of neutral vessels no longer existed as before.[171]

The importance of the Admiralty's acknowledgment that the laws of warfare influenced naval planning, as shown in its analysis whether to arm non-commissioned merchant ships for defensive purposes, its positions regarding the protection of the food supply in war, and its consideration of the effect of agreeing to zones of search during the Russo-Japanese War, has not previously been recognized. Coogan does not address the Admiralty's analysis or the Royal Commission's conclusions.[172] Nicholas Lambert quotes a single sentence from Battenberg's testimony without analysis.[173] Stephen Cobb presents Battenberg's evidence before the Commission, but does not address the implications of his, the Admiralty's, or the Commission's reliance on the laws of naval warfare.[174] The Admiralty's answers to the Royal Commission and Battenberg's evidence establish that the Royal Navy did not believe it could ignore the laws of naval warfare in planning for the protection of the nation's seaborne commerce. The Admiralty was not preparing for a future conflict in which international law would be thrown out the window upon the commencement of hostilities. It was preparing for a future war in which international law would be applied and followed at least initially. The Admiralty did not have the authority to decide whether international rules were ignored and so could not plan for such an

[171] Coogan (1981), 52-53. Nicholas Lambert confusingly asserts, again without careful analysis, that the Russo-Japanese War both reinforced '[d]oubts over the utility and applicability of current international law' and that neutrals would act as a brake on aggressive assertion of belligerent rights. N. Lambert (2012), 68-69.

[172] See Coogan (1981), 52-54.

[173] N. Lambert (2012), 65.

[174] See Cobb (2013), 92-95.

event. The Admiralty's and the Royal Commission's reliance on the laws of naval warfare as a restraint on belligerents' conduct contradicts historians who have argued that international law was of little or no moment in naval planning and preparations during this period.

For the United States, the Naval War Code of 1900 represented the US Navy 'getting into the game'. The Code, intended from the beginning as a template for the rest of the world, vaulted the US Navy to the forefront of thinking regarding the laws of naval warfare. It was referenced by Britain and the US even after it was withdrawn. The US Naval War College's studies of international law expanded and continued on a regular basis.[175] Those studies shaped consideration of the laws of naval warfare in the US, Britain, and other nations, especially in the years leading up to the 1907 Conference. The US delegates to the 1907 Conference and 1909 London Naval Conference were instructed to present the 1900 Naval War Code, with amendments as suggested in 1903, as the basis for discussions.[176] Thus, despite its short life, the Code played an important role in the development of the laws of naval warfare. In addition, the United States' experiences during the South African and Russo-Japanese wars reinforced its traditional policies.[177] Having persuaded Britain and Russia to respect neutral rights, the US confirmed its pro-neutral rights stance. Individuals and nations seeking to convince the United States to adopt a more pro-belligerent rights attitude would face an uphill battle.

Finally, the theoretical and practical experiences of the US and Britain identified areas of international law that needed to be addressed. For example, absolute contraband required a generally accepted definition and a clearer demarcation of when conditional contraband became subject to seizure. The US Naval War Code posited possible solutions. The two wars showed the need for international standardization of the procedures and opinions of prize courts. In 1902

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[175] See, for example, United States Naval War College, *International Law Topics and Discussions, 1905* (Washington, DC: Government Printing Office, 1906).

[176] James Brown Scott, ed., *Instructions to the American Delegates to The Hague Peace Conferences and their Official Reports* (New York: Oxford University Press, 1916), 83; Root to Stockton and Wilson, 21 Nov. 1908, box 46, folder 1, JBScott/Georgetown Papers.

[177] Coogan (1981), 52.

and again in 1904, bills were introduced in Parliament to bring British prize law into the twentieth century without success. Frustrated, Selborne thought that 'with the experience of the Transvaal War and with that of the present war it was sufficient to convince the most stupid Unionist member that Naval Prize Law was not a subject on which the country can afford to trifle.' The 'Naval Prize Law is international to the backbone and over this question any number of quarrels may be picked with foreign countries or avoided.'[178] The practical and theoretical experiences between 1899 and 1905 confirmed the need for, and direction of, the 1907 Conference. Many of the issues raised would shape the agenda for the 1907 Conference, at which Britain finally would discuss disputed issues of the laws of naval warfare.

[178] Selborne to Sandars, 22 Dec. 1904, Add MSS 49708, *AJB/BL*.

Chapter 6

Convergence and Divergence:

Preparations for the 1907 Conference

Unlike the Tsar's proposal for a peace conference in 1898, the date on which US Secretary of State John Hay first suggested a second international conference – 21 October 1904 – is intimately tied to naval history. The day before Hay issued his circular, Admiral Sir John A. Fisher became First Naval Lord at the British Admiralty, changed the title of his position to First Sea Lord, and then spent the next two days sick in bed.[1] Hay sent his communication on the 99th anniversary of the Battle of Trafalgar. A few hours after Hay sent his invitation, the Russian Baltic fleet, on way to its destruction in the Far East, mistook a group of British fishing trawlers on the Dogger Bank for Japanese torpedo boats and in a blaze of erratic gunfire sank one vessel and killed two fishermen, while also striking their own warships and killing several of their own men.[2]

Scholars of pre-First World War naval history, to the extent they consider the laws of naval warfare in their analyses, typically begin their studies at some point after Hay sent his suggestion for a second peace conference. The examinations generally are limited to the issues relevant to their work.[3] Yet as one historian has recognized, during the twenty-eight months between Hay's invitation and the convening of the 1907 Conference on 15 June 1907, 'the world's great powers …

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[1] Fisher to C. Fisher (his son), 23 Oct. 1904, *FGDN* II, 44.

[2] Coogan (1981), 51; Davis (1975), 114. The Dogger Bank incident nearly precipitated war between Britain and Russia. However, after a threatening communication from Britain, Russia apologized and agreed to make reparations. Coogan (1981), 51-52.

[3] See, for example, Richard Dunley, 'The Offensive Mining Service: Mine Warfare and Strategic Development in the Royal Navy 1900-1914', Unpublished PhD Thesis, King's College London (2013), 87-97 (discussing preparations regarding sea mines); N. Lambert (2012), 61-84 (discussing preparations regarding 'economic warfare'); Seligmann (2012), 95-97 (discussing preparations regarding transformation of merchant ships into warships on the high seas).

devoted a considerable amount of time and energy to considering their positions on a wide range of issues relating to the laws of war as they were then understood.'[4]

This chapter analyses the preparations of Great Britain and the United States for the 1907 Conference from a different perspective. It first considers Hay's proposal, the reactions in Britain to the invitation, and the topics suggested for the conference. Next, this chapter provides a new analysis of the preparations for the conference focusing on the discussions between the Britain and the US on the long-divisive topic of the immunity of private property at sea. This key issue received the most attention during preparations for the conference. Both countries had difficulty deciding what position to take on the subject. This chapter reveals how Britain and the US nearly switched their positions on the issue before the start of the 1907 Conference.

Hay's Proposal for a Second Peace Conference

In his annual Message to Congress on 7 December 1903, President Theodore Roosevelt again raised an issue near and dear to the US: the exemption of private property at sea from seizure during time of war. Quoting President McKinley's message to Congress in 1898, Roosevelt again recommended an international agreement to immunize all private property, excluding contraband, from seizure or destruction by belligerents. He considered it 'a matter of humanity and morals. It is anachronistic when private property is respected on land that it should not be respected at sea.'[5] Roosevelt's message entered the realm of naval strategy when he concluded:

> while commerce destroying may cause serious loss and great annoyance, it can never be more than a subsidiary factor in bringing to terms a resolute foe. This is now recognized by all of our naval experts. The fighting ship, not the commerce destroyer, is the vessel

[4] Seligmann (2012), 94.

[5] T. Roosevelt, 'Message to Congress', 7 Dec. 1903, *FRUS* 1903, XX.

whose feats add renown to a nation's history, and establish her place among the great powers of the world.[6]

A few months later, Congress passed a resolution urging the President to work toward an international understanding immunizing private property at sea from capture or destruction during war, excluding contraband.[7] In September 1904, the international Interparliamentary Union held its annual meeting in St. Louis and presented resolutions to Roosevelt urging the US to call a second peace conference to negotiate international arbitration treaties between nations. Secretary of State Hay then gave the opening speech at the American Peace Society conference in Boston, reviewing the actions of Presidents McKinley and Roosevelt supporting peace and arbitration. After receiving accolades for his speech, Hay started drafting the call for a second peace conference.[8]

Hay's invitation, made on behalf of President Roosevelt, did not suggest a formal agenda for the proposed conference. However, he did mention three topics the 1899 Conference had deferred: 'the rights and duties of neutrals, the inviolability of private property in naval warfare, and the bombardment of ports, towns, and villages by a naval force.' Not surprisingly given the then-continuing issues with Russia, Hay also mentioned distinctions between absolute and conditional contraband as affecting the rights of neutrals.[9]

Unlike initial reactions to the Tsar's invitation in 1898, which was met with great caution, the world's powers quickly responded favourably to the United States' suggestion.[10] When US Ambassador Joseph Choate presented Hay's proposal, Foreign Secretary Lansdowne indicated the British government would support the

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[6] Ibid., XXI

[7] Joint Resolution of Congress, 28 Apr. 1904, quoted in Hay to American Diplomatic Representatives, 21 Oct. 1904, in James Brown Scott, ed., *Instructions to the American Delegates to the Hague Peace Conferences and their Official Reports* (New York: Oxford University Press, 1916), 62.

[8] Davis (1975), 111-112. The resolutions from the Interparliamentary Union are quoted in Hay to American Diplomatic Representatives, 21 Oct. 1904, in Scott, ed., *Instructions*, 60.

[9] Ibid., 59-63.

[10] See Hay to American Representatives, 16 Dec. 1904, ibid., 63-65.

plan and said the war between Russia and Japan was a good reason for such a conference.[11] Although it reserved comment on proposed topics for the conference, Britain accepted the invitation three days after it was formally presented.[12] Russia and Japan also responded favourably to the invitation, but Russia suggested its participation would not be practicable due to the on-going war in the Far East. In light of Russia's position, Hay notified the nations that had accepted the proposal that a second peace conference would be postponed until Russia and Japan ended their war. However, he suggested that until a definite agreement for a meeting occurred, 'it seems desirable that a comparison of views should be had among the participants as to the scope and matter of the subjects to be brought before the Second Conference.' Hay again mentioned the inviolability of private property at sea as a subject for consideration.[13]

The Foreign Office forwarded a copy of Hay's circular to the Admiralty. The Admiralty's response made clear that two of the topics mentioned – the rights of neutrals and the immunity of private property at sea – raised significant issues. Harkening back to the wars with France a century earlier, the Admiralty warned in intense language:

> Great Britain's enormous commerce compels her to insist upon the rights of neutrals within legitimate limits; but to place restrictions upon the right of seizure of an enemy's goods at sea would deprive her of the principal, and in some cases the only, means of exerting pressure upon an enemy. It would logically entail the abolition of commercial blockade – the weapon with which we overthrew Napoleon's combination against us, and one on which we should still have to rely to a great extent.
>
> It may be urged that the inviolability of private property in war would confer great benefits upon our mercantile marine, and this would no doubt be the case, if the inviolability could be adequately

[11] Choate to Hay, 5 Nov. 1904, box 19, Choate Papers.

[12] Lansdowne to Choate, 7 Nov. 1904, FO 412/79, 3-4.

[13] Hay to American Representatives, 16 Dec. 1904, Inclosure to Choate to Lansdowne, 27 Dec. 1904, ibid., 9-10.

> guaranteed. But so long as the fleet has command of the sea, the danger to our commerce will be small, as history proves; while if the command of the sea is lost, it is doubtful if the victorious enemy would refrain from seizing a prize so easily won and of such immense value, in spite of all Treaties to the contrary.
>
> [The Board of Admiralty] are strongly of the opinion that, as a general principle, the incidence of sea command should be as far reaching in its effects as is possible within reason, and that anything which tends to reduce the influence exerted by it is detrimental to the interests of this country.[14]

The Admiralty's assertion that the immunity of private property at sea 'would logically entail the abolition of commercial blockade' was somewhat exaggerated. The immunity principle did not abrogate the ability of a belligerent to seize a ship or its cargo for violating a blockade or change the definition of 'contraband'. It said nothing about either situation. However, immunity of private property, along with the scope of contraband and blockade are all 'forms of war on commerce between the enemy and neutrals' and 'hang together'. 'They must all be abandoned or maintained together.'[15]

Before responding to the Admiralty's concerns or replying to the US, Foreign Secretary Lansdowne reported to Prime Minister Balfour that he had spoken with Britain's ambassador to the US, Cecil Spring Rice. Lansdowne told Spring Rice that he personally 'felt no doubt that whenever the question [of contraband] came up for international discussion we should be found on the side of the neutral rather than belligerent interests.'[16] Thus, Lansdowne had preconceived biases that were contrary to the Admiralty's views, likely based on Britain's recent experiences in dealing with

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[14] Admiralty to Foreign Office, 31 Dec. 1904, ibid., 10-11. Julian Corbett later expressed the same views in his article against the immunity of private property at sea published on the eve of the 1907 Conference. See Julian S. Corbett, 'The Capture of Private Property at Sea', *The Nineteenth Century and After* No. 364 (June 1907): 918-932.

[15] Anon. (Ernest M. Satow), 'The Immunity of Private Property at Sea', *The Quarterly Review* 215, no. 428 (July 1911): 21.

[16] Lansdowne to Balfour, 10 Jan. 1905, Add MSS 49729, *AJB/BL*.

Russia. Nevertheless, the Foreign Office told the Admiralty not to worry, saying 'the considerations urged … in regard to the questions to be brought before the Conference will be carefully borne in mind'.[17] On the same date, Lansdowne told Ambassador Choate that while Britain had no objection to preliminary discussion of the scope and topics for the conference, it preferred to wait until a date was set before engaging in such communications.[18]

Soon after the Treaty of Portsmouth ended the Russo-Japanese War, Russia advised President Roosevelt and other foreign ambassadors that it was prepared to participate in a second peace conference and would present a 'detailed program' to serve as the starting point for the conference's deliberations.[19] Secretary of State Elihu Root[20] accepted Russia's proposal for a second international conference, and referred to Hay's circular of a year earlier as indicating some of the topics for the conference.[21] Britain also quickly accepted Russia's invitation.[22]

Before Russia proposed any topics, Prime Minister Arthur Balfour identified one subject for consideration as well as the position Great Britain should take on it at the conference. Balfour previously had

> expressed his opinion to Admiral Sir John Fisher that the question of the use of floating mines in war and their danger to neutral shipping should be referred to the Second Peace Conference, and that the influence of [Great Britain] should be employed to limit their use, or still better, to exclude them altogether from the category of weapons permissible in civilized warfare.[23]

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[17] Foreign Office to Admiralty, 11 Jan. 1905, FO 412/79, 12.

[18] Lansdowne to Choate, 11 Jan. 1905, ibid., 11-12.

[19] Russian Embassy to Roosevelt, 13 Sept. 1905, in Scott, ed., *Instructions*, 65-66; Lansdowne to Hardinge, 26 Sept. 1905, FO 412/79, 53.

[20] President Roosevelt had appointed Root Secretary of State in July 1905, following the death of John Hay. Davis (1975), 119.

[21] Root to Russian Ambassador, 12 Oct. 1905 and Inclosure, Department of State Memorandum, 12 Oct. 1905, *FRUS* 1905, 829-830.

[22] See Lansdowne to Bertie, 11 Oct. 1905, FO 412/79, 56.

[23] Balfour, Memorandum, 25 Oct.1905, ibid.

Balfour had first raised the issue of floating mines as 'in favour of the weaker belligerent, and therefore, on the balance, detrimental' to Britain in January 1905.[24] Lansdowne recorded Balfour's note on floating mines thinking 'the subject was one of those mentioned by the U.S. gov. as appropriate for discussion.'[25] However, the US had not suggested that topic.

Less than two months after Lansdowne recorded Balfour's note, the Conservative government resigned and the Liberal Party took office. Sir Henry Campbell-Bannerman became Prime Minister. Even before assuming power, Campbell-Bannerman and the Liberal Party had championed reduction of armaments and arms limitation, especially for the Royal Navy.[26] Sir Edward Grey, who was not Campbell-Bannerman's first choice for the post, replaced Lord Lansdowne as Foreign Secretary. Relatively young at the time of his appointment, Grey did not possess much first-hand experience with European affairs or politicians.[27] However, he soon showed his diplomatic skills in handling the latter part of the First Moroccan Crisis in 1906. Indeed, Grey 'emphasised the underlying continuity in British diplomacy.'[28] In addition, Edward Marjoribanks, the second Baron Tweedmouth, became First Lord of the Admiralty in the new Liberal government.[29] These changes would influence Britain's preparations for, and conduct at, the 1907 Conference and beyond.

It was not until early April 1906 that Russia proposed subjects for the conference, which it said should begin in July. Unlike the 1899 Conference, Russia suggested excluding issues relating to limitation of military or naval forces or

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[24] Balfour to Fisher, 25 Jan. 1905, Add MSS 49710, *AJB/BL*, f. 174. For an analysis of mines and the 1907 Conference, see Dunley, 'The Offensive Mining Service', 87-110.

[25] Lansdowne to Balfour, 27 Oct. 1905, Add MSS 49792, *AJB/BL*.

[26] Davis (1975), 146-147.

[27] Keith Robbins, 'Grey, Edward, Viscount Grey of Fallodon (1862-1933)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/33570.

[28] T.G. Otte, 'Problems of Continuity: The 1906 General Election and Foreign Policy', *Journal of Liberal History* 54 (Spring 2007): 11-13.

[29] J.R. Thursfield, 'Marjoribanks, Edward, second Baron Tweedmouth (1849-1909)', rev. H.C.G. Matthew, *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/34878.

disarmament. However, similar to the 1899 Conference, most of Russia's proposed topics related to maritime warfare. Indeed, the list of naval warfare topics was breath-taking in its scope. Specifically, points three and four of Russia's communiqué suggested that the international conference consider:

> 3. Framing of a convention relative to the laws and customs of maritime warfare concerning –
>
> The special operations of maritime warfare, such as the bombardment of ports, cities, and villages by a naval force; the laying of torpedoes, etc.;
>
> The transformation of merchant vessels into war-ships;
>
> The private property of belligerents at sea;
>
> The length of time to be granted to merchant ships for their departure from ports of neutrals or the enemy after the opening of hostilities;
>
> The rights and duties of neutrals at sea, among others, the questions of contraband, the rules applicable to belligerent vessels in neutral ports; destruction in case of *vis major*, of neutral merchant vessels captured as prizes;
>
> In said convention to be drafted, there would be introduced the provisions relative to war on land that would be also applicable to maritime warfare.
>
> 4. Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864.[30]

The US quickly responded, indicating that July would not be a convenient time at which to convene the conference.[31] In a subsequent communication expanding on its proposed list of topics, Russia added: 'As for maritime warfare, in

[30] Russian Ambassador to Root, 3 Apr. 1906 and Inclosure, *FRUS* 1906 (part 2), 1626-1627.

[31] Root to Russian Ambassador, 6 Apr. 1906, ibid., 1627-1628.

regard to which the laws and customs of the several countries differ on certain points, it is necessary to establish fixed rules in keeping with the exigencies of the rights of belligerents and the interests of neutrals.'[32] Russia also agreed to postpone the conference until a mutually agreeable time.[33] In early June, the US assented to the topics proposed by Russia, but reserved 'for itself the liberty to propose to the Second Peace Conference, as one of the subjects of consideration, the reduction or limitation of armaments'.[34] Foreign Secretary Grey confided to France and the US that Britain would reduce its military expenditures, including on the Royal Navy in 1907.[35] He further told the American ambassador that Britain did not intend to initiate disarmament discussions at the conference, but would support an American initiative on the subject. Regarding the other proposed topics, including the immunity of private property at sea, the rights of neutrals, and contraband, Grey advised that the British government would decide its positions later in autumn, and would let America know its views in the 'hope we might find ourselves in agreement.'[36] Grey then told Russia that Britain wanted the conference to discuss arms reduction.[37] With the proposed subjects for the international conference touching on so many issues of maritime warfare, much preparation had to be done in Britain and the US. Indeed, the planning in both countries, including by their navies, was considerable. The issue of the immunity of private property at sea was at the forefront of those discussions from the very beginning.

Two Ships Passing in the Night: The Immunity of Private Property at Sea

The explicit inclusion of the question of the immunity of private property at sea in Hay's original circular invitation elicited immediate reactions on both sides of the Atlantic. Alfred Thayer Mahan, although long retired from the Navy, took up the case and began efforts to get the US to reconsider and change its traditional support for the principle. Mahan took his appeal straight to the top – to the President – likely

[32] Russian Ambassador to Root, 12 Apr. 1906, ibid., 1629-1630.

[33] Russian Ambassador to Root, 12 Apr. 1906, ibid., 1633.

[34] Root to Russian Ambassador, 7 June 1906, ibid., 1635-1637.

[35] Grey to Bertie, 24 July 1906, FO 412/86, 53; Grey to Durand, 25 July 1906, ibid., 55.

[36] Ibid.

[37] Grey to Benckendorff, 25 July 1906, ibid., 54.

believing he would find a sympathetic ear. President Theodore Roosevelt was recognized as a naval historian for his work on the War of 1812, and had served as Assistant Secretary of the Navy under John D. Long prior to the Spanish-American War. As President, Roosevelt understood the usefulness of the Navy as an instrument of diplomacy and projector of power, as well as its limitations.[38] Indeed, he desired a stop in the ever-increasing size of navies worldwide.[39]

In a letter to Roosevelt dated 27 December 1904, Mahan stated that he had 'seen with concern' that the country had placed the issue of immunity of private property 'in the foreground of subjects for consideration'.[40] Mahan urged the President in harsh terms to reconsider the United States' traditional support for the principle. Recognizing that the issue was inextricably tied to the size of the navy, Mahan told the President:

> That measures which tend to exempt commerce, finance, and, so far, the general community, from the sufferings of war, will not make for peace seems to me a proposition scarcely worth arguing. The furor of war needs all the chastening it can receive in the human heart, to still the mad impulses towards conflict.
>
> …
>
> There is no more moral wrong in taking 'private' property than in taking private lives; and I think my point incontestable, that property employed in commerce is no more private, in uses, than lives employed on the firing line are private. …
>
> The question is one of expediency; and what was expedient to our weakness a century ago is not expedient to our strength today.

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[38] See generally Henry J. Hendrix, *Theodore Roosevelt's Naval Diplomacy: The U.S. Navy and the Birth of the American Century* (Annapolis, MD: Naval Institute Press, 2009).

[39] Roosevelt to Schurz, 8 Sept. 1905, in Elting E. Morison, ed., *The Big Stick*, vol. V of *The Letters of Theodore Roosevelt* (Cambridge, MA: Harvard University Press, 1951), 16-17.

[40] Mahan to Roosevelt, 27 Dec. 1904, in *LP/ATM,*III: 112.

> Rather should we seek to withdraw from our old position of the flag covering the goods. We need to fasten our grip on the sea.[41]

Roosevelt's response was at best equivocal, questioning Mahan's analogy to taking lives on land but indicating he would discuss the matter with the Secretary of State and think it over.[42] Secretary Hay did not equivocate in his response. He told the President he was not impressed and said Mahan's arguments were 'the professional sailor's view of the question. I do not think the considerations he brings to bear are weighty enough to cause us to reverse our traditional policy for the last century'.[43] With that, Mahan's first attempt to change the position of the US on the issue failed.

Britain also reviewed its traditional policy opposing the immunity of private property at sea in late 1904. Prime Minister Arthur Balfour, who in late 1898 and late 1899 had questioned Britain's traditional opposition to the immunity of private property at sea, requested a study of the issue in late 1904. Sir George Clarke, the secretary to the Committee of Imperial Defence (CID) authored the response. Clarke had served in the Royal Engineers and became the first secretary to the CID in May 1904. He possessed a technical education and training and significant administrative experience. Clarke had worked closely with Balfour but was considered by senior officers as a 'naval officer *manqué*'.[44] Clarke's memorandum began by restating Britain's traditional view that, 'The belligerent right of search and of capture of neutral vessels containing contraband of war is generally believed to be of special value to this country by reason of her preponderant navy.' However, that view had not been re-examined 'in the light of modern conditions.' Clarke recognized that this right hurt Britain when it was a neutral, as evidenced by events during the on-going Russo-Japanese War. Whether opposition to the principle of immunity 'would confer

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[41] Ibid., 112-114.

[42] Roosevelt to Mahan, 29 Dec. 1904, container 4, reel 3, folder 'Theodore Roosevelt', Mahan Papers.

[43] Hay to Roosevelt, 31 Dec. 1904, reel 2, vol. 2, Hay Papers.

[44] Jason Tomes, 'Clarke, George Sydenham, Baron Sydenham of Combe (1848-1933)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/32428; John Gooch, 'Sir George Clarke's Career at the Committee of Imperial Defence, 1904-1907', *The Historical Journal* 18, no. 3 (Sept. 1975): 556.

any compensating advantages … when [Britain] was in position of a belligerent remains to be decided.' He framed the question as whether the amount of injury Britain could inflict on an enemy would 'be sufficiently important to counterbalance the resentment we should arouse amongst neutrals, to compensate us for the inconvenience and loss which might be inflicted upon us as neutrals'.[45]

Clarke noted that in answering the question, the scope of 'contraband' had to be decided. He believed that as a belligerent, Britain likely would assert a narrower definition of 'contraband' than Russia recently had done. Because Britain likely would not include items such as food and raw materials within the scope of absolute contraband, the value of the broad right of search and seizure inherent in opposition to the immunity principle had to be discounted. However, for purposes of his analysis, Clarke adopted the broader Russian definition of contraband, including food and raw cotton, because that assumption would indicate the maximum potential value of the right. He then examined the issue based on information specially prepared by the Board of Trade showing the value of imports by sea-borne trade of such goods to Germany, France, Russia, other minor countries, and the US. Again, his approach favoured adherence to opposition to the immunity principle.[46]

Despite tilting his methodology in favour of Britain's traditional position, Clarke determined that for each country analysed, including Germany, 'not only would no real advantage accrue to Great Britain from the exercise of the right of search and seizure of neutral shipping carrying contraband as defined in the extreme form, but grave danger of incurring the active hostility of' neutrals, such as the US, would occur. He concluded that the value of the right was not has great as commonly assumed; would involve risks from neutrals if asserted, and would 'seriously inconvenience' British trade if Britain were a neutral. 'The sea pressure that can be brought to bear on a Continental Power appears, therefore, to be far less effective now than formerly.' He also recognized that the related doctrine of continuous voyage 'must seem to be illusory.' He summed up his conclusions writing:

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[45] Clarke, 'The Value to Great Britain of the Right of Search and Capture of Neutral Vessels', 12 Dec. 1904, CAB 4/1/41B, 1-2.

[46] Ibid., 2, 7-8.

> An international arrangement under which neutral bottoms covered contraband would be to our advantage, and such a policy would probably find strong support from the United States. The right of search, in order to establish the nationality of a vessel, and of capture in the case of neutral vessels attempting to run a proclaimed and an effective blockade would still be required; but neither need create any serious disturbance of neutral trade.
>
> … Only a distinct advantage to us as belligerents could compensate for the restriction of our rights as neutrals. Such an advantage does not appear to arise from the right of capture of neutral vessels.[47]

Clarke thus excluded exercise of Britain's traditional and most powerful naval weapon, blockade, from possible limitation.

Nicholas Lambert has minimized Clarke's analysis, saying he 'was no more than voicing his opinion, unsupported by evidence or research, and viewing the subject from a narrowly mercantilist perspective, analyzing the problem in terms of monetary cost as opposed to strategic opportunity cost.'[48] Lambert's criticism is entirely misplaced. Clarke's memorandum was supported by careful analysis of economic information prepared by the Board of Trade. He did not analyse the problem simply in terms of money, but rather considered the non-monetary implications of adherence to Britain's traditional policy. Finally, blockade was not implicated should Britain change its traditional position. Clarke clearly indicated that neutral vessels attempting to violate a blockade still would be subject to seizure. Clarke's memorandum presented an analysis based on a methodology that favoured Britain's continued opposition to the immunity of private property at sea, yet found that continued opposition questionable.

As indicated previously, the Admiralty restated its traditional view opposing the immunity of private property at sea at the end of 1904 in response to Hay's circular, not in response to Clarke's memorandum. However, the Admiralty's

[47] Ibid., 2-6.

[48] N. Lambert (2012), 69.

position against reconsideration was not universally held. On 9 June 1905, Captain Edmond Slade, then serving as commander of the Royal Naval College in Greenwich, told the assistant naval secretary to the Committee of Imperial Defence that, 'I quite agree with the arguments set out in the memorandum on the right of search. It seems to me having signed the Treaty of Paris, and agreed to the proposition that the Flag covers the cargoes, we ought to go the whole hog and allow it in the case of all cargoes, except of course in the case of blockade. It is however so obviously to our advantage that I think it will be a difficult point to carry.' Slade noted that the memorandum did not convincingly deal with the issue of the risk of driving British merchant trade to neutral ships during war. However, he concluded:

> The amount of damage we could inflict on an enemy by interfering with his Trade carried on in neutral ships would probably be insignificant, while we should most likely raise an outcry all over the world against our so-called high-handed proceedings. If we are game to take the whole world on, then, by all means, retain the right to exercise it freely; but if we wish to remain good friends with neutrals, we must either waive it for the time, or abandon it altogether. … We must either insist on the full exercise of belligerent rights of search as the now exist, or abolish them altogether, and I think the latter is the better policy. Now is the time to move, when the whole question of maritime warfare comes up for discussion at the next Hague Conference. We must however be prepared with a definite policy, well thought out and put in such a form that there is the possibility of carrying at least the essential points of it.[49]

Politicians also disagreed with Britain's traditional opposition to the principle of the immunity of private property at sea. In a letter to *The Times* (London), Sir Robert Reid, at the time a Liberal Member of Parliament,[50] argued Britain should

[49] Slade to Nicholson, 9 June 1905, CAB 17/85, 307-308. Nicholas Lambert does not mention Slade's communication to Nicholson. See N. Lambert (2012), 68-70. A search of Lambert's references does not reveal any citation to CAB 17/85.

[50] Robert Reid was called to the bar of the Inner Temple and had success as a lawyer. Knighted while serving as solicitor-general in 1894, Prime Minister Campbell-Bannerman appointed him Lord Chancellor in December 1905 and he became Lord

exempt private property at sea from capture unless it was contraband of war or intended to violate a blockade. He based his view on the fact that 'conditions have completely changed since the Napoleonic times, and that, whatever it may have been then, it is now the true interest of Great Britain and also of other nations … to exempt private property at sea from capture unless really contraband or its place of destination be a beleaguered fortress.' He concluded by referencing Roosevelt's expressed views in support of the principle, and said Britain should follow the US and other leading powers.[51] Reid's letter to the editor quickly was followed by a rebuttal from an unnamed Royal Navy admiral. While agreeing that times had changed, that writer questioned whether exemption of private property at sea would actually be followed in time of war. He concluded that the only means to ensure exemption of British private property at sea during war 'is to have a Navy so strong and so distributed that the would-be depredator will be too much occupied in avoiding capture himself to have much opportunity of seizing the property belonging to our countrymen.'[52]

The US Navy, or at least its Naval War College, was not ignoring the issue in 1905 either. Captain Charles S. Sperry had served as president of the US Naval War College since 1903, knew Alfred Thayer Mahan, and generally agreed with Mahan's views on the laws of naval warfare.[53] As president, Sperry had maintained the College's summer studies on international law, led by Professor George C. Wilson, which were published annually. The 1903 and 1904 summer sessions had considered a variety of maritime law topics, including blockade, neutral and belligerent rights,

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Loreburn. He was a self-described radical who championed traditional Liberal positions and the immunity of private property at sea. Despite his friendship with the Prime Minister, Loreburn 'was never an easy colleague in cabinet.' A. Lentin, 'Reid, Robert, Earl Loreburn (1846-1923)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/35719. Loreburn published his thoughts on immunity of private property in a book in 1905, which later was reprinted in 1913. See Earl Loreburn, *Capture at Sea* (London: Methuen, 1913).

[51] R.T. Reid, 'Capture of Private Property at Sea', *The Times* (London), 14 Oct. 1905, p. 4.

[52] C.A.G.B., 'Capture of Private Property at Sea', *The Times* (London), 20 Oct. 1905, p. 14.

[53] Davis (1975), 128.

conversion of merchant ships into warships, and the use of neutral ports by belligerent vessels.[54] Sperry ensured that the discussions at the 1905 international law studies 'were directed to those topics which would probably come before the conference at The Hague and w[ould] be a further contribution in the same direction.'[55] Indeed, the 1905 studies analysed the inviolability of private property at sea, contraband, destruction of neutral prizes, continuous voyage, the use of mines, unneutral service, and the 1856 Declaration of Paris.[56] The importance of these studies, including to Britain, was confirmed at the 1907 Conference. Sperry, who served as a member of the American delegation, later wrote his son during the conference:

> The day after their arrival the English naval delegate came in to see me with the familiar blue bound book of our War College discussions, which he was using as a basis for propositions to put forward, just as I planned nearly four years ago when I had no idea of ever coming here. The war college books facilitate my work, and that of others, immensely – and I never did anything cleverer in my brilliant life.[57]

The immunity of private property at sea was the first topic considered in the War College's 1905 analysis. It noted that in Britain, which traditionally had opposed the principle, there 'now seems to be a tendency … to recognize that in modern warfare the capture of private property may be open to question, the opinion … being that there is little reason for continuance of the practice.' 'Modern policy seems to show that the capture or private property at sea does not necessarily bring any great military advantage.' After a full historical review, including recent experiences, the War College concluded that a proper, limited regulation exempting private property at sea from capture should be formulated. 'Of course such exemption does not cover

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[54] See generally, United States Naval War College, *International Law Discussions, 1903: The United States Naval War Code of 1900* (Washington, DC: Government Printing Office, 1904); United States Naval War College, *International Law Situations with Solutions and Notes, 1904* (Washington, DC: Government Printing Office, 1905).

[55] Sperry to Rose, 6 Mar. 1906, box 9, folder 1, Sperry Papers.

[56] See United States Naval War College, *International Law Topics and Discussions, 1905* (Washington, DC: Government Printing Office, 1906).

[57] Sperry to son, 23 June 1907, box 5, folder 2, Sperry Papers.

property of contraband nature, property involved in violation of blockade, property involved in unneutral service, or otherwise concerned directly in the war. The regulation of exemption should apply therefore only to innocent property and ships.'[58]

In late October 1905, the CID suggested that Britain's positions on the subjects likely to be discussed at the next peace conference should be considered 'to arrive at clear ideas of British interests in regard to them.' The immunity of private property at sea was the fourteenth topic identified. The CID noted that the Admiralty disagreed with the conclusions in Clarke's memorandum of December 1904, but the Board of Trade thought, 'they "appear to be sound."' Further consideration of the issue was in order. 'Whatever view may be adopted, some restriction of the sea area within which the right of search and capture could be exercised would apparently suit [Britain's] interests as neutrals, and would cause us no disadvantages as belligerents.' Anticipating a subject that would arise at the 1907 Conference and the 1909 London Conference, the CID stated, 'The adoption of a fixed radius from the territory of a belligerent, thus localizing the sphere in which neutral vessels would be liable to interference, seems desirable.'[59]

Pressures were building in Britain to address the issue. After the two letters appeared in *The Times* (London), British shipping interests petitioned the Board of Trade for appointment of a committee to consider adoption of an international agreement on the immunity of private property at sea.[60] The Foreign Office thought the government should decide what its policy would be on the issue in conjunction with the Admiralty and the Board of Trade.[61] It further opined that on 'all matters involving the rights at sea of belligerents and neutrals it is of the greatest importance that Great Britain and the United States of America … should present a united front,

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[58] United States Naval War College, *International Law Topics 1905*, 9-20.

[59] Clarke, Note, 24 Oct. 1905 and Index of Subjects, CAB 4/1/66B, ff. 235-239.

[60] Board of Trade to Foreign Office, 7 Dec. 1905, and Inclosures 1 and 2, CAB 17/85, f. 228. See also Board of Trade to Foreign Office, 2 Jan. 1906, ibid., ff. 230-232 (enclosing additional petitions).

[61] Campbell, Minute, 13 Dec. 1905, ibid., f. 229.

and by previous informal and confidential exchange of views arrive at as complete an understanding as possible.'[62]

The issue was one of the first faced by new Foreign Secretary Sir Edward Grey following the resignation of Balfour's government. His initial view was that the government should appoint a committee to 'decide whether it is to our advantage or not that private property of belligerents should be exempt from capture.' However, he was concerned how any such agreement would be enforced in war.[63] By January 1906, the Foreign Office had concluded it was inevitable that immunity of private property at sea would be deliberated at the next international conference. Although the Admiralty 'do not wish the matter to be discussed', the Foreign Office thought it would be better 'to direct and control the discussion in order to serve the interests of Great Britain'. That outcome could best be achieved by 'endeavouring, with the cooperation of the American delegates as far as possible, to keep the discussion moving along lines favourable to our own interests.'[64] Foreign Secretary Grey agreed that the views of the Admiralty and Board of Trade had to be considered.[65] The Board of Trade told Grey they agreed with the creation of an inter-departmental committee to study the issue.[66] In March, the Board of Trade told Grey that 'on considerations of naval policy and on the question of British naval predominance … great weight must therefore attach to the views expressed by the Admiralty.'[67] The Foreign Office decided that the Admiralty should be informed. Moreover, the Foreign Office was more interested in the reasons for whatever positions the Admiralty ultimately expressed as opposed to the views themselves.[68] The Foreign Office finally advised the Admiralty of the exchanges with the Board of Trade on the subject on 16 March 1906.[69] After Russia submitted its list of proposed topics for the

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[62] Davidson, Minute 13 Dec. 1905, ibid.

[63] Grey, Minute, n.d. (but between 15 and 30 Dec. 1905), ibid.

[64] Davidson, Minute, 16 Jan. 1906, FO 372/38; Davidson, Minute, 19 Jan. 1906, ibid.

[65] Grey, Minute, n.d. (but between 16 and 18 Jan. 1906), ibid.

[66] Hopwood to Foreign Office, 12 Jan. 1906, ibid.

[67] Board of Trade to Foreign Office, 12 Mar. 1906, ibid.

[68] Davidson, Minute, 15 Mar. 1906, ibid.

[69] Foreign Office to Admiralty, 16 Mar. 1906, FO 412/86. See also Maycock, Minute, 6 Apr. 1906, FO 372/23.

conference, Grey decided an expert committee should be appointed to determine whether or not Britain should drop its traditional opposition to the immunity of private property at sea, among other issues likely to arise at the conference.[70]

Shortly after Russia announced its list of topics, Alfred Thayer Mahan showed he did not lack persistence as a virtue. Mahan interrupted a holiday in Germany to write to Hay's successor as Secretary of State, Elihu Root. In a lengthy letter, Mahan argued that adherence to the immunity of private property at sea, 'derived from the expediencies of our early weakness, has been too easily continued by successive Administrations to the present day, and to very different conditions.'[71] Mahan asked for a re-examination of the subject, and suggested that the issue be submitted to a panel of experts, such as the General Board of the Navy.[72]

This time, Mahan's plea found somewhat more fertile ground. Root told Mahan that while he personally had 'serious doubts' about the policy, 'The United States has advocated the immunity of private property at sea so long and so positively that I cannot see how it is possible to make a *volte face* at the [*sic*] Hague.'[73] Nevertheless, Root forwarded Mahan's letter to the Secretary of the Navy, raising the point that 'the liability of private property to seizure in time of war insures a strong and powerful class in every commercial country deeply interested in the preservation of peace.' However, Root also noted 'the necessity for protecting a merchant marine is undoubtedly an important consideration, leading to the enormous increase of naval armament now in progress.' He asked for the views of the General Board of the Navy, headed by Admiral of the Navy George Dewey, on the subject.[74]

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[70] Foreign Office to Colonial Office, Admiralty, and Board of Trade, 19 Apr. 1906, FO 412/86, 15.

[71] Mahan to Root, 20 Apr. 1906, in *LP/ATM,*III: 157-159; Mahan to Root, with Inclosure, 20 Apr. 1906, box 9, folder 1 and box 11, folder 2, Sperry Papers.

[72] Ibid.

[73] Root to Mahan, 21 May 1906, quoted in Richard W. Turk, *The Ambiguous Relationship: Theodore Roosevelt and Alfred Thayer Mahan* (New York: Greenwood Press, 1987), 73.

[74] Root to Secretary of the Navy, 21 May 1906, box 9, folder 1, Sperry Papers.

Less than a month after receiving the assignment, the General Board responded.[75] It stated the policy should be viewed from both the moral and military standpoints, and that continuation of the America's traditional policy had recently been advocated 'from moral considerations'. However, 'the military or practical considerations have not received the attention in framing the United States policy which they deserve.' Dewey and the Board recognized that American support for the policy had stemmed from the historical weakness of the Navy, especially vis-à-vis the size of the country's maritime commerce. The Board proceeded to review the moral, legal, and military aspects of the immunity principle, analysing the impact on war with various powers, including France, Germany, Great Britain, Italy, and Japan.[76] Specifically addressing the possibility of war with Britain, the General Board concluded:

> The British Navy so far surpasses the American Navy in strength that the chances of the United States obtaining command of the sea in time of war are practically nil. … Practically the only injury which America could inflict upon England upon the sea in time of war would be such as she could inflict upon her seaborne commerce.[77]

Based on its analysis, the Board concluded that because a relatively small amount of American commerce was carried in US ships in contrast to potential enemies, thereby permitting greater injury to be done to enemy commerce, the US should not give up the military advantage it possessed by continuing to argue for the immunity of private property at sea. Oddly, the Board recommended the adoption of regulations almost identical to the provisions in the 1856 Paris Declaration Respecting Maritime Law.[78] The Board did not recommend complete renunciation of the principle of immunity of private property.

The General Board had rushed its response and was not of one mind regarding its recommendations. A month after the initial report, Board member Rear Admiral

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[75] General Board to Secretary of the Navy, 20 June 1906, box 9, folder 1, Sperry Papers.

[76] Ibid., 1, 14-24.

[77] Ibid., 15-16.

[78] Ibid., 25-26.

W.J. Barnette told Mahan in a confidential letter, because it was 'important that you should be informed regarding every phase', that the Board's analysis 'was not entirely satisfactory to the majority of the board, but there were circumstances in connection with its preparation … which made it impossible for us to make a decided point of its revision'. Barnette told Mahan that the immunity of private property issue would 'undoubtedly receive further consideration', and invited further input from Mahan.[79]

Three months later, in a supplemental memorandum, the General Board argued that the US should tie itself to Britain and

> exert our diplomatic efforts to dissuade Great Britain from giving up the great advantage she now holds over Germany, due to her great Navy and her excellent strategical position in regard to Germany's commerce. This great advantage would be lost to Great Britain should she join with the United States in its previous mistaken policy of urging an international agreement to exempt private property from seizure in time of war.[80]

Not satisfied with the General Board's failure to recommend wholesale rejection of the immunity principle, Mahan again directly raised the issue in late July 1906 during a meeting with President Roosevelt. Roosevelt remained unimpressed with Mahan's arguments.[81] Afterwards, Mahan wrote Roosevelt, again laying out his arguments but this time asking permission to take his case to the court of public opinion.[82] Roosevelt consented, saying, '[I]t is important for you to write just what you think of the matter.'[83] Mahan proceeded to embark on a concerted writing campaign, authoring articles and eventually combining some of them along with works by others into a book focused in part on the immunity of private property at sea

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[79] Barnette to Mahan, 27 July 1906, reel 2, box 2, Mahan Papers.

[80] General Board to Secretary of the Navy, 26 Sept. 1906, RG 80, box 1, vol. 4, NARA(I).

[81] Robert Seager II, *Alfred Thayer Mahan: The Man and His Letters* (Annapolis, MD: Naval Institute Press, 1977), 509; Turk, *Ambiguous Relationship*, 73.

[82] Mahan to Roosevelt, 14 Aug. 1906, in *LP/ATM,*III: 164 (see Seager, *Mahan*, 680, note 12, for correction of the date shown in *Letters and Papers*).

[83] Roosevelt to Mahan, 16 Aug. 1906, container 4, reel 3, folder 'Theodore Roosevelt', Mahan Papers

issue.[84] He clearly hoped his efforts would result in the US dropping its traditional position.[85]

Meanwhile, the Admiralty were fighting against any change in Britain's traditional policy opposing immunity. Soon after Russia announced the proposed topics, First Sea Lord Fisher wrote a friend expressing his concern: 'We have a disquieting subject ahead in a new Hague Conference. All the world will be banded against us. Our great special anti-German weapon of smashing an enemy's commerce will be wrested from us. … These Hague Conferences want trade and commerce … all to go on just as usual, only just the Fleet to fight! ROT!!!'[86] This is a critical point at issue between Fisher and his 'syndicate of discontent' critics, notably Custance, who believed that battle would settle everything. However, Fisher did not disregard preparations for the 1907 Conference as if any agreements reached simply could later be ignored. Rather, he strenuously promoted his, and the Admiralty's, view on the issue of the immunity of private property.

The committee Grey appointed to consider Britain's positions on the topics for the international conference was known as the Walton Committee after the last name of its chair, Attorney General John L. Walton. Captain Charles L. Ottley, the Director of Naval Intelligence, represented the Admiralty.[87] Ottley was an expert on sea mines and wore the distinctive 'torpedo cut' beard of the torpedo branch.[88] Fisher thought

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[84] See generally, A.T. Mahan, ed., *Some Neglected Aspects of War* (Boston: Little, Brown, 1907).

[85] See Mahan to Maxse, 5 Mar. 1907, in *LP/ATM* III: 207; Mahan to Maxse, 15 April 1907, ibid., 209; Mahan to Maxse, 30 April 1907, ibid., 210.

[86] Fisher to Fortesque, 14 Apr. 1906, *FGDN* II, 72. Nicholas Lambert also quotes this letter from Fisher.

[87] Admiralty to Foreign Office, 23 May 1906, FO 412/86, 32. The other members of the committee were the Earl of Desart, the King's Proctor; George S. Clarke, the secretary to the CID; W. E. Davidson, W. J. Howell, C.J.B. Hurst and E.A. Crowe from the Foreign Office, Colonel F.J. Davies from the War Office, and J.S. Risley. See Interdepartmental Committee, 'Interim Report', 16 July 1906, FO 372/23.

[88] 'Obituary, Rear-Admiral Sir C.L. Ottley', 26 Sept. 1932, *The Times* (London), col. 1, p. 17.

very highly of him because of his superior intellect and organising power.[89] Selborne, the previous First Lord, recommended Ottley's appointment as DNI to succeed Prince Louis of Battenberg in May 1904. Ottley was keen on the appointment in part because he suffered from seasickness so badly he could no longer serve at sea. He finally assumed his new appointment in February 1905.[90]

Even before his formal appointment to the committee, action was occurring on the issue of the immunity of private property at sea. On 12 May 1906, the Admiralty provided comments on the list of likely subjects for the conference prepared by Clarke in October 1905. On the right of capture of neutral ships, the Admiralty noted that neutral ships were immune from capture, unless carrying contraband, under the Declaration of Paris. The Admiralty disagreed with Clarke's suggestion for a limited area over which the right of search could be exercised. It also addressed specifically the right of capture of private property at sea, stating unequivocally, 'British interests require that our ancient right to capture private property at sea should be maintained.' Considering particularly a possible war with Germany, it disagreed that any limitations should be placed on the right, using language likely influenced by Fisher.[91]

Two days later, Clarke submitted another memorandum prepared at the direction of the Prime Minister. Clarke's new analysis focused on the question 'of the immunity of the private property of a *belligerent* under his flag'. Thus, the subject of his new memorandum, while linked to his December 1904 study on the immunity of *neutral* ships in time of war, was different. Indeed, Clarke stated that the question addressed in his earlier memorandum was 'absolutely distinct from that of the immunity of the private property under his flag, with which it has often been most inconveniently confused'.[92] Nicholas Lambert therefore is wrong when he asserts

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[89] H.G. Thursfield, 'Ottley, Sir Charles Langdale (1858-1932)', rev. Andrew Lambert, *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/35343.

[90] Selborne to Balfour, 17 May 1904, Add MSS 49707, *AJB/BL*; Selborne to Sanders, 19 May 1904, ibid.

[91] Inclosure to Admiralty to Imperial Defence Committee, 12 May 1906, FO 412/86, 26A-26D. Compare the language in the second to last paragraph of the Admiralty's response with Fisher to Fortescue, 14 Apr. 1906, in *FGDN* II, 72

[92] Clarke, 'The Capture of the Private Property of *Belligerents* at Sea', 14 May 1906, CAB 4/2/73B, 1 (emphasis added). Compare Clarke, 'The Value to Great Britain of

Clarke's May 1906 memorandum 'amounted to a near total reversal of his previous position.'[93] The memoranda addressed two distinct, albeit related, subjects. Clarke concluded that exercising the right to seize belligerent private property would cause economic stress on an enemy, especially Germany, and therefore tend to shorten any war. Moreover, he viewed this right as more valuable to Britain than the right of blockade. Britain therefore, had 'nothing to gain and much to lose by abandoning the right in question [capture of belligerent's private property at sea], and that of the two rights – capture and blockade – the latter is the less valuable to us as belligerents and the most injurious to us as neutrals.' However, Clarke thought Britain could bargain away the right of capture, 'If there were any reason to suppose that by abandoning an immemorial right [Britain] could secure a general reduction of naval armaments and check the naval competition which is heavily pressing upon the nations, a valid argument for change of British policy might be established.'[94] Britain's traditional policy was now a bargaining chip to be used at The Hague. Britain's willingness to use its traditional policy as a basis for negotiation reflects the economic pressure of steadily increasing naval expenditures on the government.[95]

The Admiralty submitted an analysis by Ottley on the right of capture of neutral ships. Ottley's memorandum recognized that neutral ships, unless carrying contraband, were immune from seizure. The key issue, therefore, was the scope of what was or was not contraband. Britain's interests as a neutral were that contraband should be strictly limited. As a belligerent, Ottley concluded that because of land shipment such as by rail, 'the belligerent right of interrupting contraband traffic by neutrals does not possess its former value for this country.'[96] Thus, regarding neutral shipping, the Admiralty essentially agreed with Clarke's December 1904 analysis.

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the Right of Search and Capture of *Neutral* Vessels', 12 Dec. 1904, CAB 4/1/41B (emphasis added).

[93] N. Lambert (2012), 70.

[94] Clarke, 'Capture of the Private Property of Belligerents at Sea', CAB 4/2/73B, 10-11.

[95] See Sumida (1989).

[96] Ottley, 'The Value to Great Britain of the Right of Capture of Neutral Vessels', 9 May 1906, Inclosure to Admiralty to Foreign Office, 17 May 1906, FO 412/86, 28-30.

Assistant CID Secretary Nicholson asked Captain Slade for his thoughts on the Admiralty's comments on the list of likely subjects for the 1907 Conference. Slade was unable to complete his analysis because he had not received some communications between the Admiralty and the Foreign Office. However, on the right of capture of neutral ships, he noted the question hinged on how 'contraband' was defined. Slade thought Britain had 'always dealt with this right of capture from the point of view of political expediency'. Regarding Germany, he thought the right had little value. Abandoning the right would settle a number of related issues, including contraband and sinking prizes. He concluded, 'Whatever we do we must remember that we possess a valuable asset and if we part with it we must do so at the highest price.'[97] The concept of obtaining the most value in return for relinquishing a maritime right would factor significantly at the 1909 London Conference.

In July, Clarke approached the American military attaché in London and Judge Advocate General Davis, who had already been selected as one of the American delegates to the 1907 Conference, and asked for the United States' view on the immunity of private property at sea. He also offered to share the extensive data he had collected on the issue. Informed of the approach, Secretary of State Root responded through the American ambassador, saying he would be glad to review the data on a confidential basis. Nothing further was heard at the time.[98] Root remained anxious to learn what Britain's position on the issue would be at the Conference. In October, he wrote Whitelaw Reid, the ambassador in Britain, to ask Foreign Secretary Grey what his views were on the immunity of private property. Root stated he now harboured 'grave doubts' about the United States' traditional policy. He also told Reid he thought the two countries were in agreement on the issue of the limitation of naval armaments and desired the two nations to work together on that issue.[99]

At this point, the views of the US and Britain on the issue of the immunity of private property at sea seemed to be converging. In early December 1906, Davis learned from the US military attaché in London that the British government was

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[97] Slade to Nicholson, 20 June 1906, and Inclosure, CAB 17/85, ff. 259-269.

[98] See Davis to Sperry, 12 Dec. 1906, box 9, folder 2, Sperry Papers.

[99] Root to W. Reid, 24 Oct. 1906, Reid Family Papers, MSS 65491, Part I: series A, reel 176, LCMD (hereafter *Reid/LC*).

divided, with some members favouring immunity and others opposing it. Clarke had informally suggested a compromise, that an 'enemy's property in an enemy's ships should continue to be liable to capture in accordance with the existing rule, but to couple that with a proposition abolishing contraband altogether, but leaving the belligerent a right to blockade and to capture and confiscate ships and their cargoes, which were engaged in violating the blockade.' The US wanted a definite proposal, but none was forthcoming. Secretary of State Root was inclined to allow the capture of private property at sea, although 'he sees how strong an argument in favor of immunity … has been.'[100]

After learning of the British government's divided views and the proposed compromise, now-Admiral Charles Sperry, who had already been designated the naval representative for the 1907 Conference, wrote to General Davis to make clear that he was 'in entire accord' with Mahan's more stringent views and those of the General Board of the Navy, although he thought the General Board's proposed regulations 'vague and unnecessary'.[101] In a letter to the Assistant Secretary of State, Sperry added his voice to those urging the US change its traditional position. He reiterated his agreement with Mahan and the General Board. Sperry also stated that the United States' traditional support for the immunity principle 'is due to a misunderstanding. … There is no analogy between the condition of the private property on land … and private property in transit on the high seas. … The latter is not in the hands of the consumer; it is mobile, and its destination may be changed at any instant.'[102]

While the US Secretary of State was being encouraged to drop support for the immunity of private property at sea, Prime Minister Campbell-Bannerman was being pressured to adopt the immunity principle. In December 1906, he was presented with a petition, signed by 168 members of the House of Commons, urging the government to adopt the exemption of private property at sea in time of war.[103] Clarke responded with a note to the Prime Minister, providing ammunition to use against the petitioners.

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[100] Davis to Sperry, 12 Dec. 1906, box 9, folder 2, Sperry Papers.

[101] Sperry to Davis, 14 Dec. 1906, ibid.

[102] Sperry to Bacon, 15 Dec. 1906, ibid.

[103] Petition to Sir Henry Campbell-Bannerman, Dec. 1906, CAB 17/85, ff. 271-272.

He rejected the bases for every one of the points asserted. In particular, responding to the petitioners' assertion that the US would support the principle at the upcoming conference, Clarke stated, 'We know that the view of the United States is changing on this point, and this was certain as soon as their Navy became more formidable.'[104] He concluded:

> The maintenance of the right of capture is the greatest existing deterrent to War between Powers largely dependent on commerce. If it were removed the risks of war would be immensely increased, and in this and other countries it might confidently be expected that an aggressive spirit would be engendered.[105]

Mahan would have entirely agreed with Clarke's position.

In February 1907, the Admiralty made a further submission to the Walton Committee, reiterating its unyielding opposition to any change in British policy. However, now the basis for its position was 'that there is no reason to doubt the power of the [Royal Navy] to obtain command of the sea in any war which may be regarded as reasonably probable.' Command of the sea would 'guarantee' the safety of British merchant shipping against any belligerent attacks, and 'should cause the practically complete disappearance of the enemy's mercantile flag from the high seas.'[106] Thus, no reason existed to provide for the immunity of private property at sea; the Royal Navy would provide all the protection needed.

The Admiralty's arguments supporting Britain's traditional position on the immunity of private property at sea likely had shifted to command of the sea and maintenance of the size of the Royal Navy due to the government's desire to reduce naval expenditures and to discuss disarmament at the 1907 Conference. In addition, the US wanted to discuss arms reductions, especially naval expenditures. After initially opposing introduction of the topic, Germany ultimately permitted its

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[104] Clarke, 'Note on memorandum addressed to the Prime Minister and signed by 168 Members of the House of Commons', 19 Dec. 1906, ibid., ff. 273-274.

[105] Ibid., 274.

[106] Admiralty, Memorandum, 4 Feb. 1907, CAB 37/86/14, 11.

discussion.[107] By shifting the bases for the defence of Britain's traditional position, the Admiralty also countered the government's push for reducing naval expenditures. Indeed, in January 1907, Fisher prepared a memorandum for Sir Edward Grey arguing against limiting naval armaments and the size of battleships. Fisher opposed limiting the size of battleships. On limiting naval expenditures, such an agreement was palatable only if the *status quo* of the Royal Navy's size relative to other nation's navies was maintained and somehow ensured, which was thought unlikely.[108]

The Walton Committee then issued a separate report addressing only the right of capture of private property at sea. The committee unanimously agreed no change should be made in Britain's traditional opposition to the immunity of private property at sea. It concluded that the belligerent right of capture was a 'strongly deterrent influence' against any other country with a large merchant fleet initiating war with Britain. In addition, the 'coercive pressure of economic and industrial stress' resulting from exercising the right of capture 'would operate strongly in shortening the war.'[109] The Walton Committee's final report appeared to decide the issue for Britain, concluding that the country should not abandon its traditional opposition to the immunity of private property at sea in time of war, even if other nations adopted the principle of immunity.[110] Despite some slight wavering since Hay's original invitation, Britain seemed to have come full circle, back to its starting point – or had it?

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[107] The communications regarding whether disarmament would be a topic at the conference are extensive. See, for example, Grey to Durand, 6 Nov. 1906, FO 412/86, 66-67; Bryce to Grey, 7 Mar. 1907, ibid., 115; Howard to Grey, 28 Mar. 1907, ibid., 131; Grey to Bryce, 6 May 1907, ibid., 171.

[108] Fisher, 'Memorandum on: 1. Limitation of Naval Armaments; 2. Limitation of Size of Battleships', 29 Jan. 1907, RA/VIC/MAIN/W28/42. The first page of this print found in the Royal Archives has written, in Fisher's distinctive hand, 'This paper has been prepared for Sir E. Grey for The Hague Peace Conference.'

[109] Walton Committee, 'Right of Capture of Private Property at Sea', 8 Feb. 1907, CAB 37/86/14.

[110] 'Report of the Inter-Departmental Committee appointed to consider the Subjects which may arise for Discussion at the Second Peace Conference', 21 Mar. 1907, CAB 37/87/42.

Commercial interests again petitioned the government to adopt the immunity principle.[111] Sir Robert Reid, now Lord Loreburn and Lord Chancellor, wrote a well-argued memorandum to the Cabinet urging that the country drop its opposition to the immunity of private property at sea.[112] The result was indecision by the government. On 26 April, the Cabinet met and was unable to reach any decision.[113] On 2 May, the US ambassador to Britain learned from Foreign Secretary Grey that the Cabinet had decided on the instructions for the British delegation to The Hague on every issue *except* the question of immunity of private property at sea.[114] Three days later, a decision still had not been reached. The Prime Minister told one of the British delegates that 'he had read both sides of the controversy, and at the end of each paper perused he found himself agreeing with the writer.'[115] On 16 May, Mahan re-entered the debate, asking if Eyre Crowe would give the British delegates a copy of his forthcoming article against the immunity of private property at sea, to be published in the *National Review*.[116] In his article, Mahan attacked the view that private property at sea should be treated the same as private property at land during time of war. He responded to Lord Loreburn's arguments published in October 1905, showing Loreburn's failure to adequately consider the offensive benefits to Britain from capturing commerce at sea.[117] On 3 June, Grey circulated draft instructions on the issue, which after summarizing the arguments on both sides, concluded, 'His Majesty's Government cannot authorize … any Resolution which would diminish the effective means which the navy has of bringing pressure to bear upon an enemy.'[118]

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[111] See, for example, Manchester Chamber of Commerce to Grey, 22 March 1907, FO 412/86, 128.

[112] Loreburn, 'Immunity of Private Property at Sea in Time of War', n.d. (but printed April 1907), CAB 37/88/58.

[113] Campbell-Bannerman to Edward VII, 26 April 1907, CAB 41/31/16, f. 41.

[114] W. Reid to Root, 4 May 1907, *Reid/LC*, Part I: series A, reel 176.

[115] Satow Journal, 7 May 1907, PRO 30/33/16/10, ff. 17.

[116] Crowe to Satow, 16 May 1907, PRO 30/33/10/13.

[117] A.T. Mahan, 'The Hague Conference: The Question of Immunity of Belligerent Merchant Shipping', *National Review* 49 (July 1907): 521-537. Mahan later republished his article, along with one on the same subject by Julian S. Corbett and several other articles, in A.T. Mahan, ed., *Some Neglected Aspects of War* (Boston: Little, Brown, 1907).

[118] Grey, Memorandum, 3 June 1907, CAB 37/89/65.

However, if some agreement on the diminution of military and naval armaments became dependent on adoption of the principle of immunity, the government might change its position.[119] Grey's willingness to trade an asset for savings in military expenditures is similar to Lord Salisbury's secret proposal to Russia before the 1899 Conference. The final instructions to the British delegation were identical.[120]

At the same time that Britain was reaching its final position on the issue of the immunity of private property at sea, the US was struggling to reach a final decision as well. At a day-long meeting held at the State Department on 20 April 1907, Secretary of State Root initially stated he 'was not wholly clear as to the position the Government should take on this important question', but that a different view was precluded by the position taken by the US at the 1899 Conference. Admiral Sperry and General Porter, the Navy and Army delegates, spoke extensively against the principle, arguing that its rejection would be a significant restraint on war, because 'An empty stomach does not fight, and if people fear starvation in advance they are less likely to rush to arms knowing that starvation may result from it.' Joseph Choate, the designated head of the delegation, spoke in favour of immunity, arguing that the government 'should examine the question from the humanitarian and international standpoint rather than weigh the doctrine solely in the scale of self-interest.' The discussion ended when Secretary Root concluded that, 'although he had great doubt on the question, he felt it his duty to instruct the delegation in favor of the immunity.'[121] The final instructions of 31 May unequivocally instructed the American delegation to 'maintain the traditional policy of the United States regarding the immunity of private property of belligerents at sea.'[122] The US as well had come full circle.

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[119] Ibid.

[120] Grey to Fry, 12 June 1907, FO 412/86, 235-242.

[121] 'Minutes of the American Commission to the Second Hague Conference, Held April 20, 1907, in the Diplomatic Room of the Department of State', 20 Apr. 1907, box 21, folder 'Hague Conference 1907', 10-14, Choate Papers.

[122] Scott, *Instructions*, 81. In a personal note to Choate, Root told him that he could trade abandonment of the right of privateering in order to gain agreement on the immunity of private property. Root to Choate, n.d. (ca. mid-May 1907), box 9, folder 3, Sperry Papers.

Nicholas Lambert and Christopher Martin argue that during these final months of debate, Fisher used a copy of the preface to the 1907 Naval War Plans, written by Julian Corbett, to try to influence the British and American governments' positions.[123] Martin argues, 'The purpose of the Plans was to explain the fundamental problem that an extension of immunity would bring to the Royal Navy.'[124] Lambert relies on Martin's argument and concludes, 'That Fisher handed a copy of this supposedly secret preface to current war plans to Augustus Choate, the chief US delegate to the Hague Conference, strongly supports this [Martin's] interpretation.'[125] Both Martin and Lambert are wrong. First, Julian Corbett certainly authored the preface to the 1907 War Plans. However, Martin's assertion that Fisher distributed the plans before the 1907 Conference to Foreign Secretary Grey and First Lord Tweedmouth relies on communications in January 1908, *after* the conference concluded.[126] His argument thus is not supported by his references. Lambert's 'strong support' fails even more. The document Fisher provided to *Joseph* Choate, the head of the US delegation, was a copy of Corbett's recent article on the immunity of private property at sea, which Corbett published earlier in June 1907.[127] Furthermore, Shawn Grimes and Matthew Seligmann have demonstrated that the 1907 War Plans were not simply an attempt at propaganda.[128] The 'major aim' of the 1907 plans was 'the destruction of the German

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[123] N. Lambert (2012), 76; Christopher Martin, 'The 1907 War Plans and the Second Hague Peace Conference: A Case of Propaganda', *The Journal of Strategic Studies* 28, no. 5 (Oct. 2005): 833-856.

[124] Ibid., 835.

[125] N. Lambert (2012), 76 and note 86 (referencing 'Fisher to Corbett, 8 July 1907, FISR 1/5').

[126] Martin, 'A Case of Propaganda', 839-840 and notes 46 and 47.

[127] Fisher to Corbett, 8 June 1907, *FISR* 1/5, f. 246. See Julian S. Corbett, 'The Capture of Private Property at Sea', *The Nineteenth Century and After* No. 364 (June 1907): 918-932. Fisher's letter to Corbett states 'RE PRIVATE PROPERTY AT SEA'. In addition to having Choate's first name wrong, Lambert also gives an incorrect date for the letter. It was sent in June, not July. Lambert misidentifies Choate again in a recent review essay. See Nicholas A. Lambert, 'False Prophet?: The Maritime Theory of Julian Corbett and Professional Military Education', *The Journal of Military History* 77, no. 3 (July 2013): 1068.

[128] Grimes (2012); Matthew Seligmann, 'Naval History by Conspiracy Theory: The British Admiralty before the First World War and the Methodology of Revisionism', *The Journal of Strategic Studies* 38, no. 7 (Nov. 2015): 974-978.

merchant marine and the stoppage of German seaborne trade in neutral bottoms.'[129] The first alternative plan recognized the need to conduct interdiction of enemy commerce 'beyond the ordinary radius of action of the enemy's torpedo craft, and without entering the waters where hostile mines may' exist.[130] The 1907 Plans thus recognized the problems with traditional close blockade in light of modern naval weapons.

Conclusion

In anticipation of the 1907 Hague Conference, the United States and Great Britain undertook extensive review and reconsideration of their respective positions vis-à-vis the immunity of private property at sea in time of war. The US started from its traditional support of this principle. The Navy, led by Alfred Thayer Mahan and the Navy's General Board, nearly brought about a reversal of the country's long-standing adherence to the inviolability of private property. In the end, an inability to change from the *status quo* caused the US to enter the 1907 Conference with its position unchanged. In Britain, the country's civilian leadership led the arguments that the country should drop its opposition to the immunity of private property at sea. The Royal Navy successfully led the defence of Britain's traditional policy.

The fluidity in the two countries' positions was due to the changes each navy and nation was experiencing. Britain faced increasing challenges to its naval power from other nations. It could no longer act virtually unilaterally on the seas. Neutral rights, as learned during the South African and Russo-Japanese wars, played a greater role in limiting the exercise of sea power. Britain's merchant trade interests were greater than in the past. A new equilibrium had to be found, balancing Britain's essential belligerent rights with neutral interests and the risks presented by the rest of the world. At the same time, the US Navy was well on its way to becoming a global player. The country's new naval power no longer justified the United States' traditional support for the immunity of private property at sea. While the US Navy's leaders understood this change, its civilian leadership had not yet grasped the new

[129] Paul Haggie, 'The Royal Navy and War Planning in the Fisher Era', *Journal of Contemporary History* 8, no. 3 (July 1973): 120.

[130] War Plans 1907, Part 3, ADM 116/1043B (2), f. 100 (reprinted in P.K. Kemp, ed., *The Fisher Papers* (London: Spottiswoode, Ballantyne, 1964), II: 364).

role. In late 1906 and early 1907, the two countries came tantalizingly close to realizing how close their positions were. Indeed, for a time, they each nearly adopted the other's view. Instead, the convergence of the two nation's positions diverged, as each returned to their original, traditional views at the last moment. The impact of their diverging positions would be keenly felt during the 1907 Conference.

Chapter 7

Conflict and Confrontation: The 1907 Peace Conference

The 1907 Conference opened on 15 June 1907 with representatives of forty-four nations present. The conference assigned its primary deliberations to four subsidiary commissions. Given the predominance of maritime issues on the list of subject to be considered, two of the commissions, the third and fourth, were devoted to naval issues.[1] Attendance at commission meetings, including sub-commissions, often far exceeded the number of official members and on occasion numbered nearly one hundred.[2] The presidents of the third and fourth commissions on maritime subjects set lofty goals from the beginning. The Italian delegate presiding over the Third Commission reminded the delegates on the first day of that commission's meeting that, '"The right of belligerents to adopt means of injuring the enemy is not unlimited."'[3]

The 1907 Convention's achievements regarding naval issues generally were hard-fought. For example, Rear Admiral Charles S. Sperry, the US naval delegate, stated after the conference ended that the 'Convention Relative to the Laying of Automatic Submarine Contact Mines', 'was the bitterest fight of the Conference and lasted in Committee from June 15th to September 26th, coming down at last to the very proposition put forward by the officers at our War College in the summer of 1905 when I was president.'[4] One exception to the difficult negotiations was the creation of an International Prize Court, which was seen as a reaction to decisions of Russian prize courts during its recent war with Japan. Both Great Britain and Germany proposed the establishment of such a court, although Foreign Secretary Grey did not like the way in which Germany tried to steal Britain's thunder in first making the

[1] James Brown Scott, ed., *The Proceedings of the Hague Peace Conferences: The Conference of 1907* (New York: Oxford University Press, 1920), I: 54-55.

[2] Davis (1975), 220.

[3] Scott, ed., *1907 Conference*, III: 289.

[4] Sperry to son, 6 Oct. 1907, box 5, folder 2, Sperry Papers.

proposition.[5] Despite some bumps along the road, agreement eventually was reached creating an International Prize Court. Although desirous of signing that convention, Britain did not do so because of outstanding questions regarding the law the new court was to apply.[6] The importance of that issue to Britain ultimately led to the 1909 London Conference.

This chapter focuses on the contentious issue of the immunity of private property at sea and its impact on relations between the United States and Great Britain at the conference. It first briefly introduces the British and American delegations and their instructions insofar as they related to immunity and contraband. This chapter then analyses the debates on the immunity principle and shows how that issue influenced Britain's bold proposal to abolish the concept of contraband. Finally, the views of the US and Britain regarding the outcome of the conference are considered as a prelude to the London Naval Conference of 1909.

Delegations and Directions

Unlike the 1899 Conference, when the American delegation was selected shortly before the conference began and with little forethought, President Roosevelt acted quickly and decisively. Within weeks of Russia reinvigorating his previous call for an international conference, Roosevelt and Secretary of State Root determined that Joseph H. Choate, the retired ambassador to Great Britain, would chair the delegation.[7] By January 1906, Roosevelt and Root had selected the other members of the delegation.[8] Retired General Horace Porter, who had previously served as the American ambassador to France and had been considered a possible delegate to the 1899 Conference, would join Choate. Porter had achieved renown when he located and returned the remains of US Navy hero John Paul Jones to the US in June 1905. He had become president of the Navy League, and his interest in naval matters may have factored in his selection. Roosevelt and Root selected retired judge Uriah Rose

[5] Grey to Fry, 22 June 1907, FO 800/69.

[6] Davis (1975), 222-227, 249-250.

[7] Roosevelt to Choate, 10 Oct. 1905, box 16, Choate Papers. See Davis (1975), 125-126

[8] See Root to Carnegie, 11 Jan. 1906, box 186, part 1, Root Papers.

as the third delegate.[9] As army and navy delegates, Root initially asked now-General William Crozier, who had served on the 1899 delegation. However, Crozier declined and suggested Judge Advocate General George B. Davis, an international law scholar, whom Root selected.[10] Root asked Naval War College President Sperry to be the naval delegate. Sperry was surprised by his selection, but hoped if he performed his duties well, he might gain a suitable sea command.[11]

Preparations for the conference began almost immediately. Root hosted the entire delegation plus Assistant Secretary of State Bacon at dinner on 28 February 1906. President Roosevelt had the same group for dinner at the White House the next day.[12] Sperry sent copies of the War College's international law studies for 1903 and 1904 to each of the other American delegates, along with 'a list of subjects said to have been prepared by the British government for discussion preliminary to presentation to the conference, which was received confidentially and which I suppose to be the same as that alluded to in the Secretary of State's conversation with the delegates on the 28th ultimo at his house.'[13] President Roosevelt also appointed Sperry and Davis as plenipotentiaries to the Geneva Convention of 1906, which was called for the limited purpose of revising the rules for the treatment of the sick and wounded during war, not more general laws relating to the conduct of war. Attendance at the 1906 Geneva Conference was a valuable experience for the 1907 Conference, because many of the issues touching on maritime matters were deferred to the later conference.[14] Indeed, Sperry and Davis were told 'the chief purpose of the

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[9] Davis (1975) 126-127.

[10] Crozier to Root, 21 Feb. 1906, box 44, Root Papers.

[11] Sperry to son, 1 Mar. 1906, box 5, folder 1, Sperry Papers. Roosevelt later recommended Sperry for command of a new division of battleships. Roosevelt to Bonaparte, 1 Oct. 1906, box 126, letter 2, Charles J. Bonaparte Papers, MSS 13151, LCMD.

[12] See Babcock to Sperry, 28 Feb. 1906 and handwritten note on reverse, box 9, folder 1, Sperry Papers; Choate to C. Choate (wife), 1 Mar. 1906, box 4, Choate Papers.

[13] Sperry to Choate, 6 Mar. 1906, box 9, folder 1, Sperry Papers; Sperry to Rose, 6 Mar. 1906, ibid. Unfortunately, the confidential list of subjects has not been located in any archive.

[14] See Root to Delegates, 16 May 1906, box 8, folder 2, Sperry Papers; Sperry to Marble, 7 July 1906, box 9, folder 1, ibid.; Sperry to son, 30 Mar. 1906, box 5, folder 1, ibid.

meeting at Geneva will be to gather information for presentation to the later Conference at The Hague'.[15] Thus, before the delegation's instructions were finalized, the US delegates were well educated and prepared on international naval issues. Each had the diplomatic status of plenipotentiaries at the conference.[16]

The final instructions covered a variety of topics that were expected to come before the conference, including arbitration of disputes, the use of force to collect debts, and limitation of armaments. On maritime matters the delegation was told to advocate an agreement declaring private property, except contraband or on board ships attempting to violate a blockade, immune from capture or seizure at sea. The US Naval War Code of 1900, with amendments proposed in 1903, was to be used as the basis for a code of rules for maritime warfare. Regarding the rights and duties of neutrals, Secretary Root instructed, 'No rules should be adopted for the purpose of mitigating the evils of war to belligerents which will tend to strongly destroy the right of neutrals, and no rules should be adopted regarding the rights of neutrals which will tend to strongly bring about war.' Neutral rights should be 'most clearly and distinctly defined and understood' to avoid any misunderstandings. Specific attention was drawn to contraband. Root warned that the recent actions of belligerents (Russia) to expand the scope of contraband, when used in conjunction with the doctrine of continuous voyage, essentially destroyed the concepts that a free ship makes free goods and that a blockade must be effective to be lawful. Root's warning anticipated the scenario that developed in 1914, when Britain expanded the list of contraband, much to the consternation of the US. Accordingly, the delegation was to 'do all in your power to bring about an agreement upon what is to constitute contraband; and it is very desirable that the list should be limited as narrowly as possible.'[17]

Octogenarian Sir Edward Fry led Britain's delegation. Although he had no diplomatic experience and had to re-learn French, the language of diplomacy, in preparation for the conference, he was an experienced international jurist and a member of the Permanent Court of Arbitration. Sir Ernest Satow and Lord Reay were

[15] Davis to Sperry, 18 Apr. 1906, box 8, folder 1, ibid.

[16] See Scott, ed., *1907 Conference*, I: 2-3.

[17] Root to American Delegates, 31 May 1907, in James Brown Scott, ed., *Instructions to the American Delegates to the Hague Peace Conferences and their Official Reports* (New York: Oxford University Press, 1916), 69-85.

both experienced diplomats, the former having been appointed to the Permanent Court of Arbitration in November 1906, and the latter having served in the Dutch diplomatic service before becoming a British subject. Sir Henry Howard, who served on the delegation to the 1899 Conference, joined Fry, Satow, and Reay as the only members with plenipotentiary powers. Major General Edmond Elles and DNI Captain Charles Ottley were appointed the military and naval delegates, respectively, although without plenipotentiary status.[18] Foreign Secretary Grey appointed career Foreign Office clerk Eyre Crowe as secretary to the plenipotentiaries.[19] Crowe's appointment began his involvement in issues involving contraband and the rights of neutrals and belligerents in war that would continue through the Declaration of London in 1908-1909. As delegation secretary in 1907, Crowe exercised considerable influence over Fry and eventually induced Fry to promote him to technical delegate so that he could participate in conference meetings.[20]

Ottley's selection was not without some controversy, at least in the mind of CID Secretary George Clarke. When the Foreign Office asked for Ottley to serve on the delegation, Clarke told Viscount Esher, 'Ottley is quite unfit, physically, mentally, to represent H.M.'s Navy at a great international gathering. He is intellectually much of a fibertijibit & personally he looks too much like a Portuguese Eurasian.' Clarke suggested Admiral of the Fleet Edward Seymour as an alternative appointment.[21]

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[18] Foreign Office to War Office and Admiralty, 4 Apr. 1907, FO 412/86, 133; Foreign Office to Satow, Reay, and Howard, 19 Apr. 1907, ibid., 156; N.J. Brailey, 'Sir Ernest Satow and the 1907 Second Hague Peace Conference', *Diplomacy & Statecraft* 13, no. 2 (June 2002): 203; N.J. Brailey, 'Satow, Sir Ernest Mason (1843-1929)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press 2004) http://www.oxforddnb.com/view/article/35955; Davis (1975), 178-179; Scott, ed., *1907 Conference*, I: 7-8.

[19] Crowe to Satow, 9 Apr. 1907, PRO 30/33/10/13.

For a discussion of Crowe's life and career in the Foreign Office, see generally Sibyl Crowe and Edward Corp, *Our Ablest Public Servant: Sir Eyre Crowe, 1864-1925* (Braunton, UK: Merlin, 1993); Edward Corp, 'Crowe, Sir Eyre Alexander Barby Wichart (1864–1925)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/32650.

[20] Brailey, 'Satow and Hague Peace Conference', 205-207; T.G. Otte and Eyre A. Crowe, 'Communication: The Crowe-Satow Correspondence (1907-14)', *Diplomacy & Statecraft* 7, no. 3 (Nov. 1996): 770-772.

[21] Clarke to Esher, 4 Apr. 1907, 10/40 *ESHR*.

Clarke further complained when he learned Ottley had asked to bring a young commander, 'who knows nothing about these matters' as his servant to The Hague. 'This representation of the Navy by a man like Ottley … is seriously improper & undignified. It also is most unfair to the Br[itish] Navy as a whole.'[22] After Ottley's appointment was announced, Clarke told Esher, 'Naturally, the Navy has no opinion of Ottley, who is not a sailor & has no practical experience of commanding ships. Is it too late to add Wilson?'[23] Ottley, however, was Fisher's man and so remained a delegate.

Grey's final instructions, addressed to Fry, covered most topics that had been considered by the Walton Committee. On immunity of private property, Grey noted that adoption of such a principle would entail the abolition of the right of blockade. 'Unless commercial blockade is discontinued there will be constant interference with an enemy's ships, and constant disputes as to what constitutes an effective blockade.' Because the 'British Navy is the only offensive weapon which Great Britain has against Continental Powers', Britain could not support immunity of private property. Regarding contraband, 'His Majesty's Government recognize to the full the desirability of freeing neutral commerce to the utmost extent possible from interference by belligerent Powers', and would propose the abolition of contraband entirely instead of trying to create better rules for determining what was and was not contraband. Britain wanted to immunize neutral trade during war from interference by belligerents, subject to the limitation of blockade. Such immunization would benefit Britain whether it was a neutral or belligerent. If such a proposal failed, the delegation was to endeavour to achieve a definite list of items considered to be contraband that was as narrow as possible.[24] Grey also sent a confidential letter to

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Clarke's overtly racist denigration is similar to the attacks on Fisher as an Asiatic. Esher, Fisher, and Clarke had served together in 1903-1904 on the War Office Committee to recommend Army reforms after the South African War; hence their close, personal correspondence. See Mackay (1973), 225, 292-293.

[22] Clarke to Esher, 26 Apr. 1907, 10/40 *ESHR*. Ottley's request to bring Lieutenant Commander Seagrave to the conference was granted. See Foreign Office to Admiralty, 22 Apr. 1907, FO 412/86, 158.

[23] Clarke to Esher, 1 May 1907, 10/40 *ESHR*.

[24] Grey to Fry, 12 June 1907, FO 412/86, 235-242. On the connection between immunity of private property and blockade, see Anon. (Ernest M. Satow), 'The

Fry with several additional observations. He told Fry to maintain good relations with other delegations, especially the US. Regarding the 'novel proposition' for the abolition of contraband, he suggested having another nation initiate it.[25]

Nicholas Lambert contends that First Sea Lord Fisher likewise provided additional instructions to Ottley.[26] He relies on a letter Fisher wrote near the end of the conference to his friend Viscount Esher, in which he stated: 'the orders given to the Admiralty delegates are so stringent that they would leave by the next train if our fighting interests are tampered with'.[27] Lambert assumes such orders existed, admits no copy remains, and then engages in wholesale speculation as to their precise terms.[28] According to Lambert, Fisher did not care about the proceedings because he spent the summer away from London and the Second Sea Lord, William May, to whom matters were delegated, was not 'an intellectual heavyweight'. Ottley, therefore, 'was entrusted with safeguarding the Admiralty's interests as best he could, and with keeping them informed of developments.'[29]

Ottley did more than simply keep the Admiralty advised of the proceedings. He regularly sought and received advice on what positions to take from the Admiralty and Foreign Office, as Lambert admits.[30] However, Fisher was not aloof and unconcerned with what was occurring at The Hague. Before the conference started, he vigorously lobbied the chief US delegate on the immunity of private property issue, mines, and other topics.[31] Foreign Office records suggest Fisher was consulted on the position to take on an issue regarding prize money that arose during the

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Immunity of Private Property at Sea', *The Quarterly Review* 215, no. 428 (July 1911): 20-22.

[25] Grey to Fry, 12 June 1907, FO 800/69, f. 114.

[26] N. Lambert (2012), 86.

[27] Fisher to Esher, 17 Oct. 1907, 10/42, *ESHR*.

[28] N. Lambert (2012), 86.

[29] Ibid., 86-87.

[30] Ibid., 87. For examples of Ottley's requests for guidance, see, Hardinge, Minute, 23 Sept. 1907, FO 372/74; Grey to Tweedmouth, 26 July 1907, MSS 254/406, Tweedmouth Papers; May to Tweedmouth, 7 Sept. 1907, MSS 254/471, ibid.

[31] See Fisher to Corbett, 8 June 1907, *FISR* 1/5, f. 246; Fisher to King Edward VII, 4 Oct. 1907, in *FGDN* II, 139-143.

conference.[32] Ottley telegraphed Fisher at least once for directions on a proposed provision to the convention regulating the conduct of maritime warfare.[33] Admiralty Secretary Greene spoke with Fisher for guidance during the conference.[34] Finally, Fisher commented on the conference's proceedings during a lunch with Russian diplomats.[35] Thus, Fisher was not uninterested the conference's proceedings or its outcome. However, no evidence exists, as Nicholas Lambert speculates, that Fisher gave additional, secret orders to Ottley prior to the Conference.

Collision

Even before he arrived in London, Joseph Choate strongly favoured the immunity of private property at sea. While still on board his ship bound for Southampton, he wrote his son:

> I still think that the immunity of private property at sea will be the one important question – Whether England is prepared to yield the position she has held so obstinately and come in to our view that all private property at sea except contraband and violating blockade ought to be exempt from capture and destruction I hope to learn her expectations. It seems so manifestly for her interest. I hope she will.[36]

Not unlike Mahan and his efforts to influence the views of the British delegation, First Sea Lord Fisher tried to influence the American delegation upon its arrival in London. He provided a copy of Julian Corbett's article arguing against the principle of immunity of private property to Choate.[37] In the article, Corbett

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[32] Flint to Maycock, 1 Aug. 1907, FO 372/70 ('Sir John Fisher and Lord Tweedmouth have expressed themselves accordingly with regard to these papers which I now return.').

[33] Ottley to Maycock, 12 Aug. 1907, ibid. ('Immediately on receipt of your letter I telegraphed to Sir John Fisher'.).

[34] See Greene to Maycock, 9 Aug. 1907, ibid. ('I have mentioned the matter to Sir John Fisher'.).

[35] Fisher to King Edward VII, 8 Sept. 1907, in *FGDN* II, 129-130.

[36] Choate to J. Choate, 30 May 1907, box 8, Choate Papers.

[37] See Fisher to Corbett, 8 June 1907, *FISR* 1/5, f. 246. Fisher encouraged Corbett to write this article. D.M. Schurman, *Julian S. Corbett, 1854-1922: Historian of British Maritime Policy from Drake to Jellicoe* (London: Royal Historical Society, 1981), 71.

masterfully dismantled the arguments in favour of immunity. Corbett examined the history of the principle and showed, like Mahan in his contemporaneous commentary, that the ability to capture private property at sea was not inhumane, immoral, unjust, or inconsistent with protection of private property in war on land. In fact, 'the sea service, in demanding the retention of its right to general capture, asks no more than what is universally granted to the land service.' 'Command of the sea' means control of communications, and by capturing property at sea, a navy interrupts an enemy's communications, 'without in any way demoralising our *personnel* or goading the enemy's people to irregular retaliation.' The risk of having property captured at sea also had a deterrent value 'beyond measure', and was far more effective than a blockade in 'destroying the enemy's commerce by control of sea communication.' Capturing property at sea was a critical means of offence for the Royal Navy, one that could not be surrendered.[38] Fisher thought the article had 'done splendid service with Choate'.[39] Events would prove Fisher was mistaken.

At a meeting at the Foreign Office in London between Foreign Secretary Grey, the US ambassador, and the primary American and British delegates to the conference, Grey tried to gain unanimity on a number of subjects as well as the manner of approaching them at the conference, including the issue of the immunity of private property at sea. Sir Ernest Satow noted in his journal that while Choate would advocate immunity, he would maintain support for blockades. Grey wanted the British delegates to argue that abolition of blockade logically would follow from adoption of the immunity principle. Because Germany favoured both immunity and abolition of blockade, Britain's plan would separate the US from Germany. In addition, Choate indicated he would probably support Britain's proposal to abolish contraband. Satow thought at the end of the meeting, 'we are agreed on all points

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[38] Julian S. Corbett, 'The Capture of Private Property at Sea', *The Nineteenth Century and After*, no. 364 (June 1907): 918-932 (italics in original). After some difficulties with the publisher of Corbett's article, Mahan included it in his edited volume published shortly after the conclusion of the 1907 Conference. See A.T. Mahan, ed., *Some Neglected Aspects of War* (Boston: Little, Brown, 1907). See also, Mahan to Corbett, 12 Aug. 1907, CBT 2/4, Sir Julian Stafford Corbett Papers, National Maritime Museum, Greenwich, UK.

[39] Fisher to Corbett, 8 June 1907, *FISR* 1/5.

except "private property at sea".'[40] However, Satow did not realize the depth of Choate's support for the principle.

The American ambassador in London previously had reported to Secretary of State Root that Britain was 'extremely strong against the immunity of private property at sea – holding about the view which our Captain Mahan has vigorously enforced.' Nevertheless, when Choate was in London,

> he seemed enthusiastic in favor of this doctrine and rather startled the Minister for Foreign Affairs by holding before him the prospect of a union of all nations against the British position – inquiring whether under these circumstances Great Britain would still feel disposed to maintain its ground. Sir Edward replied with a good deal of adroitness that they would take that question into consideration when circumstances arose.[41]

President Roosevelt was 'astounded at what … Choate said.' He confirmed that he held 'to our traditional American view, but in rather tepid fashion', but asked, 'Is it worth my while to call the matter to the attention of either Root or Choate?'[42] Unfortunately, by the time Roosevelt learned of Choate's action, the relations between the two countries at the 1907 Conference had been harmed.

Choate aggressively asserted America's positions and denied cooperation to Britain. On 14 June, Grey was unable to convince Choate to present the British proposal to abolish contraband.[43] At the first meeting of the Fourth Commission of the conference on 24 June, Choate read the American proposal banning the capture of private property at sea, excluding contraband and ships attempting to violate a blockade.[44] Choate tried to get Britain to change its position, arguing that adoption of the immunity principle was inevitable. He told Satow that he would make a speech in

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[40] Satow Journal, 12 June 1907, PRO 30/33/16/10, 25.

[41] Reid to Roosevelt, 19 July 1907, Theodore Roosevelt Papers, MSS 38299, series 1, reel 75, LCMD.

[42] Roosevelt to Reid, 29 July 1907, series 1, reel 74, ibid.

[43] Satow Journal, 14 June 1907, PRO 30/33/16/10, 26.

[44] Scott, ed., *1907 Conference*, III: 745.

support of immunity. Satow told Choate Britain's reply 'would be in a friendly tone.'[45] However, Satow did not know the tenor Choate's speech would take.

Choate's lengthy speech reviewed the history of the immunity principle and America's leadership in advocating its adoption, including efforts to obtain adoption by the signatories to the 1856 Paris Declaration. Choate's arguments were directed primarily against Britain and were highly critical of any nation that opposed immunity of private property at sea in time of war. He quoted various British supporters of immunity including Lord Palmerston, John Stuart Mill, and Lord Loreburn's October 1905 letter to *The Times* (London). Choate described the value of the right of capture in modern times as 'greatly diminished and … still rapidly diminishing.' He further urged adoption of the principle on the grounds of humanity.[46] Choate received praise for his speech from a variety of sources. US industrialist and peace activist Andrew Carnegie said it was a 'great speech' and encouraged a vote on the issue, saying, 'It would be an object lesson to the people of Britain to see her standing apart when Germany and America and most of the other nations stand together.'[47] Andrew White, the head of the American delegation in 1899, told Choate 'all thinking Americans' would be grateful for the speech and, 'It is a pity that … the English could not have taken a different view of it.'[48]

The British recognized the speech was directed primarily against them. Satow described it as 'full of repetitions, quotations, mainly directed against us'.[49] At the next meeting of the Fourth Commission, Satow said Britain had carefully studied the question but could not support the immunity principle because to do so 'would seem to involve the abolition of the right of blockade.' He then announced that 'animated by a sincere desire to relieve neutrals, so far as possible, of the burdens of war,' Britain would propose to abolish contraband of war.[50] US delegate Uriah Rose then made another long speech extolling immunity, using a colourful American analogy

[45] Satow Journal, 26 June 1907, PRO 30/33/16/10, 31.

[46] Scott, ed., *1907 Conference*, III: 752-767.

[47] Carnegie to Choate, 1 July 1907, box 21, Choate Papers.

[48] White to Choate, 12 Aug. 1907, ibid.

[49] Satow Journal, 28 June 1907, PRO 30/33/16/10, 33.

[50] Scott, ed., *1907 Conference*, III: 777-778.

that implicitly compared Britain to swine for opposing the doctrine.[51] Angered, Sir Edward Fry responded, countering Rose's assertion that the capture of private property at sea was cruel. When merchant ships at sea were captured, '[n]o one is killed, no one is even wounded; it is a peaceful proceeding.' He concluded, 'To complain therefore of the capture of merchant ships and not to prohibit war on land is to choose the greater of two evils.'[52] Satow described Rose's speech as 'tedious' and 'intended for home consumption'.[53]

By this time, the American delegation had formed a view of Britain's approach to the conference. General Davis wrote Assistant Secretary of State Bacon:

> In naval questions the policy of the British Government is slowly disclosing itself, and may be stated as follows. It is the desire of the Government to retain the right to capture enemy private property on the high seas in time of war and there is no present indication of a disposition on its part to forego that right, or to submit to its modification. As a concession, and with a view to secure its retention, England is willing to abolish the distinction of contraband of war. That is she is willing to allow property hitherto regarded as contraband to go free, even though destined to a hostile port; but retains the right of blockade to the full extent to which is now recognized by International Law.
>
> This is an important modification and may be regarded as excluding from the list of contraband all property useful to a belligerent in war. The right of search of neutral vessels would also be restricted to a mere verification of nationality. The right of blockade would be retained and, as it is after all the most efficient method of preventing neutral commerce with belligerents, the sacrifice of the principle of contraband is not a very extensive concession. This much may be said, however, the exercise of the right of search is a very great

[51] Scott, ed., *1907 Conference*, III: 785-790.

[52] Ibid., 790. Fry's response was Corbett's argument against the immunity of private property at sea. See Corbett, 'Capture of Private Property', 920-925.

[53] Satow Journal, 5 July 1907, PRO 30/33/16/10, 36-37.

> annoyance to neutral shipping, and any stipulations which diminishes the scope of its exercise adds materially to that freedom from annoyance which neutrals are so desirous of securing, especially in behalf of their shipping which carries passengers as well as freight.[54]

On the day set for a vote on the United States' immunity proposal, Satow suggested a delay was in order, until Britain's proposal to abolish contraband could be decided, because each issue was related.[55] Choate opposed any further delay and demanded a vote without further discussion. When the vote was taken, twenty-one nations, including Germany, voted with the US, while eleven countries voted along with Great Britain against the immunity of private property at sea.[56] Without unanimity, the US proposal for immunity of private property failed.[57] Britain had not been isolated on the immunity issue as Choate had predicted, but the US and Germany now were firmly viewed as 'pulling together' against Britain.[58] Late in the conference, Sperry wrote his son that members of the sub-committee on which he served 'all had a contempt for Captain Ottley, R.N.'[59]

Even members of the British delegation thought Britain now was viewed as an obstacle to achieving any meaningful results at the conference. Lord Reay told Prime Minister Campbell-Bannerman, 'I am afraid this impression has been confirmed by our attitude on the immunity of private property at sea.'[60] Reay also was concerned of the consequences on Britain's proposal to abolish contraband. He told Campbell-Bannerman:

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[54] Davis to Bacon, 1 July 1907, RG 59, NF 40 – M862, roll 7, NARA(II).

[55] Scott, ed., *1907 Conference*, III: 821-822. See also Satow Journal, 17 July 1901, PRO 30/33/16/10, 41.

[56] Scott, ed., *1907 Conference*, III: 823-825. The other nations voting with Britain included France, Japan, and Russia.

[57] Two minor conventions were later adopted granting immunity to coastal trade and fishing boats, religious or scientific vessels, and for a limited period of time to most vessels in enemy ports at the start of a war. Davis (1975), 231-232.

[58] Carnegie to Morley, 30 July 1907, Andrew Carnegie Papers, No. MSS 15107, box, 143, LCMD.

[59] Sperry to son, 6 Oct. 1907, box 5, folder 2, Sperry Papers.

[60] Reay to Campbell-Bannerman, 21 July 1907, Add MSS 52514, ff. 89-92, Henry Campbell-Bannerman Papers, BL.

> The unfavourable impression on the conference by our proposal to declare that an unarmed collier was a man of war cannot be exaggerated. It was generally felt that this rendered our proposal of abolishing contraband nugatory. Several delegates friendly to England … came to me asking how the government could have mentioned such an absurd proposal.
>
> … Any expectation we had of carrying the abolition of contraband was destroyed by this untenable proposal of declaring a defenceless collier to be a man of war.[61]

Campbell-Bannerman's private secretary sent Reay's communication to Foreign Secretary Grey for comment. Grey defended the positions taken and asserted that as to Britain 'playing "le beau role" there is at the conference a tendency to make proposals restricting the use of naval power, which are not all seriously meant, & which it is known we shall oppose. But in light of this I think the initiative we have taken about contraband & appeal courts & floating mines … & the fact that we have not resisted anything important except immunity – of enemy's ships from capture … is not such a bad record.'[62] However, Grey wrote to First Lord Tweedmouth, saying, 'We must compromise now & then upon points which are not of vital importance. I hear Ottley is coming over to consult with the Admiralty on various points and if in his opinion compromise … is admissible, & from the point of view of the Conference desirable, I hope the Admiralty will consider them in this light. We have stood out firmly on points which are vital, that is right of capture at sea, & it is only in regards smaller points that I make the suggestion.'[63]

Choate would take his revenge for Britain's opposition to the immunity principle on the proposal to abolish contraband. At a meeting of the delegations, 'Choate told the British that if their proposal were adopted it would convert Britain

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[61] Ibid. The proposal to declare unarmed colliers men of war is consistent with a statement allegedly made by Fisher to the German naval delegate at the 1899 Conference. See W.T. Stead, 'Character Sketch: Admiral Fisher', *The Review of Reviews* XLI, no. 242 (Feb. 1910): 118.

[62] Grey, Minute, n.d., attached to Reay to Campbell-Bannerman, 21 July 1907, Add MSS 52514, ff. 89-92, Henry Campbell-Bannerman Papers, BL.

[63] Grey to Tweedmouth, 26 July 1907, MSS 254/406, Tweedmouth Papers.

from the Mistress of the Seas into the Tyrant of the Seas, and that they were claiming the right to sink neutral vessels carrying contraband while professing to want abolition of contraband.'[64] Britain formally made its proposal to abolish contraband on 24 July.[65] Sperry announced the United States' opposition, saying a restrictive list of contraband items was preferable.[66] Reay indicated surprise at America's position, and referenced statements made by Marcy, the American minister to France in 1856. General Porter responded that, 'since the old-fashioned policy of Marcy the Government of the United States has had experience and at the present time prefers the more modern policy of Roosevelt.'[67] Informed of the situation with the US, Foreign Secretary Grey offered to speak to the American ambassador if the British delegation 'find that you are having difficulties with the United States Delegates which you think are unreasonable'.[68]

Choate cabled Secretary of State Root for instructions, saying Russia, France and Germany would oppose the proposal. Britain's proposal, 'is obviously designed in special interest of Great Britain whether as a neutral or a belligerent. … Admiral Sperry … is strongly opposed to our voting for this British proposition and thinks the United States should adhere to its established law of contraband but get a definition of it as near your instructions as possible for which he is making every effort.'[69] President Roosevelt responded indicating a preference for specific enumeration of contraband rather than abolition 'which would probably give rise to very serious and doubtful questions.'[70] When the final vote was taken on 31 July, twenty-five nations voted with Britain in favour of abolishing contraband. Only five nations voted no: France, Germany, Russia, the US, and Montenegro.[71] Britain's plan came closer to success than the US proposal for immunity, but also failed for lack of unanimity.

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[64] Davis (1975), 236.

[65] Scott, ed., *1907 Conference*, III: 844-849.

[66] Ibid., 861.

[67] Ibid., 865-866.

[68] Grey to Fry, 30 July 1907, FO 800/69, ff. 171.

[69] Choate to Root, 27 July 1907, RG 59, NF 40 – M862, roll 7, NARA(II).

[70] Roosevelt to Adee, 30 July 1907, ibid.

[71] Scott, ed., *1907 Conference*, III: 872.

Two months later, Britain proposed a convention abolishing contraband amongst those twenty-five nations that had supported the proposition. Britain circulated a draft convention and invited all the countries that had voted in favour of abolition, plus the US. Sperry and Porter attended on behalf of the US but said nothing. They did not need to speak. Every delegate present stated that they now could not, or would not, join in any such convention. The only person who spoke favourably was the delegate from Haiti.[72] Satow described the result: 'A complete defeat for the unwise policy of trying to force a convention on people who had merely accepted the principle of abolition.'[73] The newspaper W.T. Stead published regarding the proceedings at The Hague described the event as 'Une débâcle britannique'.[74] Britain's effort to abolish contraband had met the same fate as the United States' proposal for the immunity of private property at sea.

Disappointment or Opportunity?

When the 1907 Conference ended a few weeks later in October, the views of the US and Great Britain were mixed. Choate told Root that the 'work done at the Conference is much more satisfactory than the papers – especially the English papers would have you believe. The English are so angry at the failure of their pet scheme for insuring the naval supremacy of Great Britain that they can find no good in anything done.'[75] The formal report of the American delegation reviewed each of the fourteen conventions adopted at the conference and recommended each of them.[76]

Britain did indeed take a different view. Foreign Secretary Grey, while congratulating Fry on the end of the conference, told him, 'If the results of the Conference are in some degree disappointing, it is I think because there is too little goodwill and too much suspicion on the part of some of the other Powers.'[77] Fry told

[72] Satow Journal, 25 Sept. 1907, PRO 30/33/16/10, 72; Sperry, Memorandum, 25 Sept. 1907, box 10, folder 1, Sperry Papers.

[73] Satow Journal, 25 Sept. 1907, PRO 30/33/16/10, 72.

[74] *Courrier de la Conférence de la Paix*, 26 Sept. 1907, p. 3, copy in box 10, folder 1, Sperry Papers.

[75] Choate to Root, 5 Nov. 1907, box 49, Root Papers.

[76] 'Report to the Secretary of State of the Delegates of the United States to the Second Hague Conference', in Scott, ed., *Instructions*, 86-138.

[77] Grey to Fry, 19 Oct. 1907, FO 800/69, 212.

Grey that at the conference, 'There were elements of friction, but we avoided an explosion.'[78] Fisher told King Edward VII, 'Mr. Choate swore to me before going to the Hague Conference how he would side with England over submarine mines and other matters, but Germany has collared the United States absolutely at The Hague!'[79] He told First Lord of the Admiralty Tweedmouth: 'I hope the Foreign Office will begin to appreciate German diplomacy – How well the Germans have done it! Choate tied with black & yellow ribbons to Marschall's chariot wheels would be a lovely picture!'[80] Charles Hardinge, the Permanent Under-Secretary at the Foreign Office, despite his conservative views, described the conference as a 'fiasco' to the King's private secretary and said, 'I do not think our Delegation was composed as it should be but console myself with the thought that we have not sacrificed a good diplomatist to the unrealizable ideals of the radical party.'[81] He later told the King's private secretary, 'The results of the Hague Conference have been so meagre that it was decided … that any honours conferred on those who took part in it should be of a departmental character so as to avoid criticism in the Press. … I understand that the proposal made by Tweedmouth is to confer on Ottley a K.C.B., but this is an Admiralty affair which does not concern us.'[82] Across the top of this communication, King Edward VII scrawled that he 'wishes the understanding that the Admiralty should recommend Ottley for K.C.M.G for his birthday honours the K.C.B. is too much.'[83]

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[78] Fry to Grey, 22 Oct. 1907, ibid., 221.

[79] Fisher to King Edward VII, 4 Oct. 1907, *FGDN* II, 139-143.

[80] Fisher to Tweedmouth, 14 Oct. 1907, MSS 254/450, Tweedmouth Papers (emphasis in original). Fisher apparently believed that Imperial Germany's national colours were black and yellow. In fact, those were the colours of Austria-Hungary.

[81] Hardinge to Knollys, 27 Sept. 1907, RA/VIC/MAIN/W52/31.

[82] Hardinge to Knollys, 20 Oct. 1907, RA/VIC/MAIN/W52/49. 'K.C.B.' refers to Knight Commander of the Most Honourable Order of the Bath, the fourth highest order of chivalry in Great Britain.

[83] Ibid. 'K.C.M.G.' refers to Knight Commander of the Most Distinguished Order of St. Michael and St. George, the sixth highest order of chivalry. Ottley in fact received this recognition for his services at The Hague. H.G. Thursfield, 'Ottley, Sir Charles Langdale (1858-1932)', rev. Andrew Lambert, *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/35343.

However, opportunities remained which might benefit Britain. In a confidential memorandum to Foreign Secretary Grey, Fry stated, 'in most cases we have been able to defeat proposals which would have been injurious to us and we have been able to carry proposals which we considered opportune. Our supremacy at sea exposes us to great risks of a coalition being formed against us.' In his cover letter, Fry told Grey, 'It will I think be very desirable to consider whether an agreement can be arrived at by the great powers on contraband, blockade, rights and duties of neutrals and other subjects which the conference has not been able to settle, but on which divergent views have been clearly defined.'[84] That opportunity for an agreement among the great naval powers indeed would present itself at the London Naval Conference of 1909.

Conclusion

The 1907 Conference resulted in the adoption of a number of conventions, many of which still are part of the fabric of international law more than 100 years later. Eight conventions (VI to XIII) related to naval warfare. Five of those conventions have continuing vitality.[85] However, the Conference resulted in conflict and confrontation between the US and Britain regarding the laws of naval warfare. The two nations clashed on the cherished American principle of the immunity of private property at sea. In retaliation for Britain's opposition to that principle, the US opposed Britain's proposal to abolish the concept of contraband. Britain unsuccessfully attempted to obtain a convention amongst those nations that supported its proposal. But what would have been the result, standing alone, if contraband had been abolished? An effective blockade still could be employed by a naval power, and with it, the right to stop and search neutral vessels for contraband or to determine if the destination was a belligerent port. Britain was the only great power with a large enough navy to attempt such actions with any degree of success. However, such actions likely would incite protests from neutrals as experienced during the South African and Russo-Japanese wars. Moreover, the conventional definition of an 'effective' blockade required the blockading fleet to be close to the enemy coast and

[84] Fry to Grey, and attached memorandum, 22 Oct. 1907, FO 800/69, 215-222.

[85] See Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, 3rd ed. (Oxford, UK: Oxford University Press, 2000), 67-138.

ports, which with modern technologies such as torpedoes and mines risked their destruction.

As Sir Edward Fry intimated to Foreign Secretary Grey, an opportunity existed for a more comprehensive agreement on naval issues. Although blockade law was not a topic for the conference, Italy had presented a proposal to define the area within which a blockade could be considered effective. After Britain's proposal to abolish contraband failed discussions ensued to categorize goods into various types of contraband. The Admiralty then realized Italy's proposal was a potential means of achieving the ability to conduct an effective blockade under modern conditions.[86] More time was required to consider this opportunity and to attain an agreement. The conflict and confrontation between the United States and Great Britain perhaps had a silver lining. The 1909 London Conference would prove that to be the case.

[86] Christopher Martin, 'The Declaration of London: a matter of operational capability', *Historical Research*, vol. 82, no. 218 (Nov. 2009): 737-742.

Chapter 8

High Tide: The 1909 London Conference

The London Naval Conference of 1909 was the last of the three international conferences to address the laws of naval warfare in the first decade of the twentieth century. It was the most exclusive, with only nine major sea powers and The Netherlands in attendance.[1] Called by Great Britain, the conference was intended to establish agreement among the major sea powers on the 'generally recognized principles of international law' to be applied by the International Prize Court established at the 1907 Hague Conference.[2] The 'Declaration Concerning the Laws of Naval War' produced by the 1909 conference represented hard fought compromises. The conference teetered on the brink of dissolution due to the refusal of certain nations – first Germany and then the United States – to compromise their traditional positions. Despite all the efforts and considerable negotiating, the Declaration ultimately failed of its intended purpose. Britain never acceded to it following years of vociferous debate. While the US Senate ratified the declaration, President William Howard Taft never signed the treaty.[3] Indeed, none of the nations in attendance ultimately acceded to it.

This chapter provides a different perspective on the London Naval Conference of 1909. It first reviews its genesis, followed by the preparations and efforts at cooperation between Britain and the US. Next, this chapter considers the most important issues and positions taken during the conference by the two nations: principally on the issues of contraband, blockade, and continuous voyage. It shows

[1] The nine sea powers were: Austria-Hungary, France, Germany, Great Britain, Italy, Japan, Russia, Spain, and the US. The Netherlands later asked to be added with the support of the US. See Grey to His Majesty's Representatives, 27 Feb. 1908, in Foreign Office, *Correspondence and Documents Respecting the International Naval Conference, held in London, December 1908-February 1909* (London: HMSO, 1909), 1 (hereafter *International Naval Conference*); Grey to His Majesty's Representatives, 14 Sept. 1908, ADM 116/1080.

[2] Grey to His Majesty's Representatives, 27 Feb. 1908, *International Naval Conference*, 1.

[3] Coogan (1981), 127, 134-135.

the compromises both made in order to achieve unanimous agreement on the laws of naval warfare. Finally, it analyses Britain's actions at the conference and corrects previous scholarly interpretations.

Genesis and Preparations

The London Conference of 1909 had its genesis in Britain's desire for the international prize court established by Convention XII at the 1907 Conference to have an established and agreed body of law to apply in cases brought before it. Moreover, Britain had been unable to conclude an agreement at the 1907 Hague Conference on the subjects of blockade and contraband. Having failed to achieve abolition of the concept of contraband entirely, Britain wanted at least an agreement identifying specific items as absolute or conditional contraband. Britain also had issues regarding the scope of a blockade and the doctrine of continuous voyage. In late September 1907, Sir Charles Ottley, the British naval delegate at the 1907 Conference, told the Foreign Office that while he thought a compromise with Germany 'might prove acceptable to France and other Powers', it likely was too late in the conference to obtain the necessary approval of all the nations present. He sought consent to tell the delegates from the principal naval powers that blockade, 'with 2 or 3 other purely naval questions, would be discussed at a small conference to be held in London' in the spring of 1908. The Foreign Office told Ottley 'that a great effort should be made' to obtain an agreement at The Hague, 'as we and other Departments are weary of conferences'. He concurred, but if no agreement was possible, the Foreign Office and Admiralty could be counted on to achieve resolution of the blockade question at a small conference of naval powers.[4] Foreign Secretary Grey did not want the subject of blockade left for determination by the new International Prize Court.[5]

However, Germany tied an agreement on blockade and contraband to abolition of the doctrine of continuous voyage at the 1907 Conference. It wanted to limit the area within which a neutral merchant ship attempting to avoid a blockade could be seized, such that a ship carrying contraband but heading for a neutral port next to a blockaded port could not be stopped. Britain and the Admiralty wanted to be able to

[4] Hardinge, Minute to Grey, 20 Sept. 1907, FO 372/74.

[5] Grey, Minute, n.d. (but likely 20 Sept. 1907), ibid.

seize a neutral ship carrying contraband anywhere within an area of 800 miles from a blockaded port. The Admiralty viewed the 800-mile limitation as a 'tremendous concession' because its existing rules would 'enable us to capture a vessel even at Yokohama if she was proceeding to a European blockade port.' The Foreign Office concluded that the distance between these positions was 'so wide that it may be doubted whether it can ever be reached over even at a future Conference.'[6] Concerned that '[p]oor Sir E. Fry is probably weary of the struggle', Grey reluctantly decided to defer any further attempts to reach an understanding on blockade and contraband until a new conference the next spring.[7] Doing so meant 'an interminable delay in the creation of the Prize Court of Appeal' on which the delegates had reached agreement, because an understanding on contraband and blockade would 'form a most important code of law' for the new court to apply.[8] Indeed, the second paragraph of Article 7 of the International Prize Court Convention provided that in the absence of an applicable treaty, 'the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity.'[9] Britain was concerned what those principles would be, given that its positions on the laws of naval warfare were viewed very differently (i.e., pro-belligerent rights) compared with those of Continental powers.

Slade first discussed the planned naval conference with Ottley and Eyre Crowe of the Foreign Office on 8 January.[10] Shortly thereafter, Grey asked if the Admiralty agreed with holding a conference of leading naval powers, and identified eight other countries (not including The Netherlands at the time) to invite. He suggested creating a small committee to decide the specific topics for the conference and to prepare a memorandum on Britain's position on each topic and 'how far the maintenance of the British doctrine on each point is really vital to the interests of this

[6] Maycock, Minute, 24 Sept. 1907, ibid. See also Fry to Grey, 24 Sept. 1907, ibid.; Fry to Grey, 2 Oct. 1907, ibid.

[7] Hardinge, Minute, 24 Sept. 1907, ibid.; Grey, Minute, 24 Sept. 1907, ibid.

[8] Maycock, Minute, 26 Sept. 1907, ibid.

[9] James Brown Scott, ed., *The Proceedings of the Hague Peace Conferences: The Conference of 1907* (New York: Oxford University Press, 1920), I: 661-662.

[10] Slade diary, 8 Jan. 1908, MRF 39/2, Slade Papers. (I thank Professor Andrew Lambert for providing a copy of Slade's diary.)

Country and what concessions it would be possible to make in order to secure unanimity among all the Powers.'[11] Captain Edmond J.W. Slade had been appointed Director of Naval Intelligence in November 1907, succeeding Charles Ottley, who became secretary of the Committee of Imperial Defence.[12] Slade concurred in the Foreign Office's suggestion. He recognized the importance of having an agreed code of naval warfare before the 1907 prize court convention was ratified. The proposed code had to be viewed from two aspects: (1) when Britain was a belligerent; and (2) when it was a neutral, 'and of these the former is far the more important. The code of law may mean all the difference between the effectiveness of our main weapon or its comparative ineffectiveness when we are [a] belligerent'.[13] Assistant Admiralty Secretary W. Graham Greene agreed and suggested Slade should be one of the Admiralty's representatives on the proposed committee.[14] First Lord of the Admiralty Lord Tweedmouth concurred.[15] First Sea Lord Sir John Fisher likely received Grey's proposal and the minutes of Slade and Greene.[16]

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[11] Foreign Office to Admiralty, 14 Jan. 1908, ADM 116/1079.

Christopher Martin contends that Grey's communication 'implies a clear intention to sacrifice whatever rights necessary in order to achieve consensus' at the proposed conference. Christopher Martin, 'The Declaration of London: a matter of operational capability', *Historical Research* 82, no. 218 (Nov. 2006): 745. I disagree. If that was Grey's intention, no reason existed to ask the Admiralty or the proposed committee to determine Britain's vital interests and what concessions might be possible on the proposed topics. Grey's memorandum is just what it appears: a request for analysis and guidance in anticipation of the conference.

[12] N. Lambert (2012), 94. For a description of Slade, his heritage, and career before and after his appointment as DNI, see Cobb (2013), 98-108. However, Cobb incorrectly identifies Slade as a member of Britain's delegation to the 1907 Conference. See ibid., 100, 270.

Ruddock Mackay and Nicholas Lambert have criticized Slade as being hidebound and reliant too much on history to inform modern thinking. See Mackay (1973), 396; Nicholas A. Lambert, *Sir John Fisher's Naval Revolution* (Columbia, SC: University of South Carolina Press, 1999), 173-174. Matthew Seligmann argues that Slade was neither, and instead 'held sensible, informed, and realistic views about the security problems that faced Britain.' Seligmann (2012), 89-92.

[13] Slade, Minute, 17 Jan. 1908, ADM 116/1079.

[14] Greene, Minute, 20 Jan. 1908, ibid.

[15] Tweedmouth, Minute, 21 Jan. 1908, ibid.

[16] See 'Proposed conference of the Powers in connection with subjects not decided at the last Peace Conference', 14 Jan. 1908, ibid. The first page of the Admiralty's

Slade promptly began preparations for the London Conference. The other members of the Naval Conference Committee were the Earl of Desart, the treasury solicitor; Eyre Crowe and C.J.B. Hurst from the Foreign Office; and Ottley.[17] Slade and Ottley were primarily responsible for preparation of the British positions.[18] By 17 February, the draft invitation letter was finished.[19] Ten days later, Grey officially invited Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, and the United States to a conference to discuss certain topics important to maritime warfare. England identified eight subjects for discussion:

(a.) Contraband, including the circumstances under which particular articles can be considered as contraband; the penalties for their carriage; the immunity of a ship from search when under convoy; and the rules with regard to compensation where vessels have been seized but have been found in fact only to be carrying innocent cargo;

(b.) Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized;

(c.) The doctrine of continuous voyage in respect both of contraband and of blockade;

(d.) The legality of the destruction of neutral vessels prior to their condemnation by a Prize Court;

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minutes on Grey's proposal indicates with a large checkmark that they were referred to First Sea Lord Fisher.

[17] Lord Desart was the King's Proctor and a member of the inter-departmental Walton Committee appointed in July 1906 to examine the topics proposed for the 1907 Conference. Grey reconvened that committee to review the conventions agreed at the 1907 Conference and to make recommendations whether Great Britain should accede to them. Desart became the committee chair after Attorney General Walton died. Ottley, Crowe, and Hurst were members of both committees. See 'Report of the Inter-Departmental Committee appointed to consider the Subjects which may arise for Discussion at the Second Peace Conference', 21 Mar. 1907, FO 881/9041X, 32; Second Peace Conference Inter-Departmental Committee, Meeting Minutes, 31 Jan. 1908, FO 881/9325X. Ottley had been Britain's naval delegate, and Crowe and Hurst technical delegates, at the 1907 Conference. See Scott, ed., *1907 Conference*, I: 8.

[18] Coogan (1981), 105-106.

[19] Slade diary, 17 Feb. 1908, MRF 39/2, Slade Papers.

(e.) The rules as to neutral ships or persons rendering 'unneutral service' ('*assistance hostile*');

(f.) The legality of the conversion of a merchant-vessel into a war-ship on the high seas;

(g.) The rules as to the transfer of merchant-vessels from a belligerent to a neutral flag during or in contemplation of hostilities;

(h.) The question of whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.[20]

Britain asked the invitees to submit memoranda on their views as to the 'correct rule of international law' on each of the topics, along with the bases for those positions.[21] Slade and the other committee members worked on Britain's positions in April and May.[22] They soon recognized that the country 'cannot maintain the attitude adopted by the text books' regarding blockade.[23] The committee prepared a memorandum describing the country's positions on the eight subjects after analysing British court decisions. Grey sent the memorandum to the other invited nations, which now included The Netherlands.[24]

Grey's memorandum elicited an immediate response from Germany. The German government thought the conference and memoranda exchanged should be directed toward establishing treaty laws to be enacted, without distinguishing laws now in force. Germany sought the United States' agreement to this approach and asked whether the US intended to exchange a memorandum and if so, in what form.[25] The US State Department then asked the Navy Department for its views.[26] While the

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[20] Grey to His Majesty's Representatives, 27 Feb. 1908, *International Naval Conference*, 1-2.

[21] Ibid., 2.

[22] Slade diary, 10 Apr. and 13 May 1908, MRF 39/2, Slade Papers.

[23] Slade diary, 20 May 1908, ibid.

[24] Grey to MacDonald, with Inclosure, 8 July 1908, *International Naval Conference*, 2-11.

[25] Hatzfeldt to Root, 28 July 1908, enclosing von Schoen to de Salis, 10 July 1908, RG 59, NF 12655 – M862, roll 822, NARA(II).

[26] Adee to Secretary of the Navy, 10 Aug. 1908, ibid.

US Naval War College studied Britain's memorandum on its legal precedents and the topics for the conference,[27] the Navy recommended that Germany and Britain should simply be referred to the Naval War Code of 1900 and proposed amendments of 1903.[28] The State Department told Grey and Germany that the US would not submit a memorandum of its views, and quoted an excerpt from the instructions to the 1907 Conference delegation referring to the US Naval War Code of 1900, with amendments proposed in 1903 as the basis for discussions.[29] The War College later made the same recommendation, with a few explanations on the eight identified topics.[30] The War College also suggested a conference with Professor George C. Wilson, who was to be one of the US delegates.[31] The State Department took umbrage with this suggestion 'to coach the delegate.' The State Department was responsible for foreign affairs, and the conference, 'although it concerns maritime law, falls within [its] jurisdiction'.[32] As a result, no meeting occurred and the pre-conference views of the US Navy were ignored. The refusal to obtain the Navy's opinions later would create problems during the conference.

An issue arose during the summer regarding who would be Britain's naval delegate. Grey thought Lord Desart should preside over the conference. He asked if that appointment was agreeable to the Admiralty 'as the Department most intimately concerned.'[33] Sir Reginald McKenna, who had succeeded Lord Tweedmouth as First

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[27] See, for example, Memoranda dated 27 Aug., 31 Aug., and 4 Sept. 1908, RG 8, series 2, box 87, folder 2, NWCNHC.

[28] Secretary of the Navy to Secretary of State, 27 Aug. 1908, RG 59, NF 12655 – M862, roll 822, NARA(II); Scott to Adee, 29 Aug. 1908, ibid. No evidence exists that the Navy solicited Mahan's views. After the 1907 Conference he had embarked on a campaign to provoke public discussion against international arbitration of disputes. See Mahan to Laughton, 6 Sept. 1907, Alfred Thayer Mahan Papers, manuscript collection 17, box 2, folder 19, NWCNHC; Mahan to Laughton, 1 Nov. 1907, ibid.

[29] Scott, Minute, 4 Sept. 1908, ibid.; Howard to Grey and Inclosure, 7 Sept. 1908, ADM 116/1080.

[30] Merrell to Secretary of the Navy, 29 Sept. 1908, RG 8, series 2, box 87, folder 2, NWCNHC.

[31] Smith to Secretary of the Navy, 29 Aug. 1908, RG 59, NF 12655 – M862, roll 822, NARA(II).

[32] Scott to Adee, 2 Sept. 1908, ibid.

[33] Grey to McKenna, 1 May 1908, FO 800/87, f. 156.

Lord of the Admiralty on 12 April 1908 following the resignation of Campbell-Bannerman as Prime Minister,[34] agreed with Desart's appointment, but wanted the naval delegate to have diplomatic standing so he could fully participate in all meetings of the conference, because he was 'given to understand that the Department was not satisfied with the position assigned to Captain Ottley at the Hague Conference'.[35] Despite McKenna's request, Britain's naval delegates did not receive diplomatic status.[36] The Admiralty nominated DNI Slade as its representative in mid-July.[37] However, First Sea Lord Fisher wanted Ottley to be 'one of the members' of the delegation because he was at the 1907 Conference and so 'more intimately associated with the Admiralty views on the subject than anyone else.'[38] Grey asked McKenna if Ottley could represent the Admiralty 'owing to the difficulty of having so many delegates.'[39] McKenna apparently spoke with Grey and decided to change delegates. Fisher told Slade that Ottley would replace him because it 'is essential to have Ottley on it as he was of course the manager of the whole business at the Hague Conference but apparent objection is raised (internal … so I gather) to more than one English Naval Representative'. Fisher thought Slade would be 'extremely glad as I am' that he now would be free to work in the Admiralty.[40] The Admiralty formally told the Foreign Office it wanted Ottley instead of Slade at the end of August.[41] Grey mollified everyone by appointing both Slade and Ottley. Lord Desart, along with

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[34] D.M. Cregier, 'McKenna, Reginald (1863-1943)', *Oxford Dictionary of National Biography* (Oxford, UK: Oxford University Press, 2004) http://www.oxforddnb.com/view/article/34744. H.H. Asquith succeeded Campbell-Bannerman as Prime Minister.

[35] McKenna to Grey, May 1908, FO 800/87, ff. 163-165. Ottley complained about his status at the 1907 Conference and the difficulties it caused. Ottley to Tweedmouth, 16 July 1907, MSS 254/501, Tweedmouth Papers.

[36] See James Brown Scott, ed., *The Declaration of London February 26, 1909* (New York: Oxford University Press, 1919), 112-113. Christopher Martin's assertion that Slade and Ottley received diplomatic status is wrong. See Martin, 'The Declaration of London', 735.

[37] See McKenna to Grey, 31 Aug. 1908, ADM 116/1079.

[38] Fisher to Grey, 29 July 1908, FO 800/87, ff. 166-167.

[39] Minute, 29 July 1908, ibid.; Grey, Minute, 29 July 1908, ibid.

[40] Fisher to Slade, 3 Aug. 1908, ADM 116/1079.

[41] McKenna to Grey, 31 Aug. 1908, ibid.

Ottley, Slade, Crowe, and Hurst, comprised Britain's delegation.[42] However, as late as 25 November, the Admiralty asked the Foreign Office to confirm that Slade would continue as one of the delegates in addition to Ottley, although Slade 'should be recognized as more directly representing' the Admiralty by virtue of his position as DNI.[43]

The Foreign Office reviewed the memoranda received from the invited nations as of early September.[44] Russia and Germany questioned the feasibility of limiting the conference's work to 'formulating the existing rules of international law.' Both preferred that the outcome of the conference be a treaty stating rules for the future. However, Britain desired a declaration of the laws the attending powers thought binding at the present time. It believed 'the rules agreed upon should purport to be what the Powers recognize as the existing law, even though it may be necessary to restate some of the old principles in terms more applicable to the altered conditions of modern commerce.'[45]

Grey learned that Rear Admiral Charles Stockton, the drafter of the US Naval War Code of 1900, would represent the US. Because Stockton was in Europe already, Grey asked if he would meet Britain's delegates for 'a preliminary exchange of views' so that 'some sort of understanding could be established as to the particular lines to be followed by them in handling the several questions.'[46] Slade first met Stockton in late October and described him as 'deaf & not very quick'.[47] Slade's assessment was in error; Stockton was neither. Stockton viewed the meetings as an

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[42] Grey to Desart, 9 Nov. 1908, *International Naval Conference*, 18.

[43] Greene, Minute, 19 Nov. 1908, ADM 116/1079; McKenna to Grey, 25 Nov. 1908, ibid. A note on Greene's minute indicates Fisher was informed of this request.

[44] See generally *International Naval Conference*, 12-18. The various responses are reproduced in Foreign Office, *Proceedings of the International Naval Conference, Held in London, December 1908-February 1909* (Miscellaneous No. 5) (HMSO: London, 1909), 2-56.

[45] Grey to His Majesty's Representatives, 14 Sept. 1908, ADM 116/1080. Britain ultimately compromised somewhat on this point. The Declaration's Preliminary Provision states that the articles adopted 'correspond in substance with generally recognized principles of international law.' Scott, ed., *London Declaration*, 114.

[46] Grey to Reid, 6 Oct. 1908, ibid.

[47] Slade diary, 26 Oct. 1908, MRF 39/2, Slade Papers.

opportunity to learn which points were important to Britain.[48] After meetings with Slade and Ottley, Stockton reported to Secretary of State Elihu Root and the US Navy's General Board that Britain was 'in a peculiar situation with respect to the International Prize Court' as the only nation at the 1907 Conference that had not signed the prize court convention. Because of the unsatisfactory experiences with Russia's prize courts during the Russo-Japanese War, Britain wanted an international code of naval warfare that 'will not be too prejudicial to their interests and which will still enable them to accept the Prize Court Treaty.' According to Stockton, Slade and Ottley understood Britain likely would have to compromise on issues relating to blockade, which all agreed was a vital belligerent right. They asked Stockton's view of France's proposition of a *rayon d'action*. Ottley mentioned an 800-mile radius. Stockton thought the concept could work if an indeterminate area was defined that would still prevent captures thousands of miles away from the scene of operations, as had occurred during the South African War.[49] The president of the US Naval War College generally agreed with Stockton's analysis, including the American position that liability for capture for attempting to violate a blockade should exist from the moment the neutral ship leaves its home port, at least within a large radius from the blockaded port, which would be the practical application of the *rayon d'action* proposed by France.[50]

Slade completed a detailed memorandum on the positions Britain should take at the conference after analysing the statements received from all the invited nations except the US and Spain. On contraband, he thought agreement could be reached on categories and itemization of contraband along the lines proposed at the 1907 Conference. He also believed Britain could safely concede that a neutral ship carrying contraband was subject to seizure only if a certain proportion of its cargo was contraband. Regarding blockade, Slade determined that British decisions were more in line with Continental practices than generally believed. He concluded, 'It is therefore probable that we shall be able to arrive at a working compromise, without endangering our interests.' British courts had ruled that liability for attempting to

[48] Stockton to Root, 27 Oct. 1908, RG 59, NF 12655 – M862, roll 822, NARA(II).

[49] Stockton to Root, 5 Nov. 1908, ibid.; Stockton to General Board, 18 Nov. 1908, RG 8, series 2, box 87, folder 2, NWCNHC.

[50] Merrell to Bureau of Navigation, 12 Dec. 1908, ibid.

breach a blockade consisted of the actual attempt to enter a blockaded port and not the intent to do so. Slade suggested that the French rule regarding radius of action could be adopted if the conference agreed to 'a formula which is capable of wide interpretation, and which will give us all that we were practically able to assert in former wars.' He recommended that the proposal made with the Admiralty's approval at the 1907 Conference be modified to replace the 800-mile zone with 'an area of operation limited by the range of action of the vessels employed in maintaining the blockade.'[51]

On continuous voyage, Britain faced the same difficulty because British court decisions did not support the country's position. British courts in fact had applied nearly the same principles as France. Slade again thought the Admiralty's position from the 1907 Conference could be slightly rephrased so that a neutral ship carrying contraband was liable to be seized anywhere if the ultimate destination of the goods was an enemy port, even if the vessel might first stop at neutral ports. The proposed rule did not limit the right to stop and search a neutral, subject to having to pay damages if a prize court later determined that a vessel had improperly been seized. This rule would avoid the abuses suffered during the Russo-Japanese War. However, application of the doctrine of continuous voyage to blockade could not be supported. The American Civil War decision in *The Springbok*, which allowed seizure of contraband goods destined for a neutral port because they ultimately were intended for a blockaded port, was 'very much more drastic than anything [Britain had] attempted to enforce.' On the conversion of merchant ships into warships, enemy property, and the transfer of merchant ships to neutral owners during or in anticipation of war, Slade recommended that Britain either insist on its position or leave the question open. On the other topics for the conference, he thought the country could either safely concede its positions or that suitable compromises could be reached.[52]

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[51] Slade, 'Memorandum by the Director of Naval Intelligence', 29 Sept. 1908, ADM 116/1079, pp. 1-3, 6-12, 24-25.

[52] Ibid., pp. 12-13, 24-26. Slade had questioned the value of continuous voyage as applied to contraband not involving a blockade during the 1907 Conference. See Slade, 'Memorandum on "Continuous Voyage" and the probable result of abandoning the right', 18 Sept. 1907, MRF 39/2, Slade Papers.

Slade submitted his memorandum for approval by the Admiralty.[53] Assistant Secretary Greene closely considered Slade's positions on contraband and blockade, 'on which their Lordships last year were prepared to compromise'. Greene concluded:

> As regards contraband it is not now proposed to alter the rule that articles of contraband may be seized anywhere if the ultimate destination of the suspected cargo is hostile even though the vessel may first call at neutral ports; as regards blockade it is considered that an elastic rule substituting radius of action of the blockading vessels for an arbitrary 800 mile zone is preferable in several respects, while it gives practically all the latitude which we could reasonably require and is more in agreement with the actual line taken by British Prize Courts during our naval wars.[54]

On destruction of neutral prizes, Greene thought a concession allowing destruction in exceptional circumstances could be achieved without adverse consequences. Britain could not absolutely oppose conversion of merchant ships into warships on the high seas because its past actions had approached that practice. However, Britain's position should be conceded only if strong rules were agreed to prevent abuse.[55]

The Admiralty's Naval Law Branch took a harder view. It noted that no international code of naval warfare necessarily could avoid adverse decisions by the International Prize Court: 'In the long run it is considered the interests of the strongest Naval Power must suffer, and suffer heavily.' Nevertheless, if the International Prize Court was to become reality, 'an agreement on some of the main principles of international law is naturally desirable and a compromise is necessary.' Slade's conclusions were 'concurred in generally as being the best possible in the circumstances and best calculated to bring about an agreement with other Powers.' While the concessions proposed were 'considerable', few of them, viewed separately, were of 'vital importance to' Britain. The Naval Law Branch commented specifically

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[53] Slade, Minute, 13 October 1908, ADM 116/1079.

[54] Greene, Minute, 19 Oct. 1908, ibid.

[55] Ibid.

only on two points relating to blockade. First, it did not believe British law was clear that liability for violating a blockade arose only from the attempt, not the intention to do so. As long as blockades could be effectively maintained without relying on intent as the controlling factor, the point could be conceded. The Naval Law Branch favoured the 800-mile radius rule over the 'radius of action' rule. The latter 'is a convenient expression for ordinary purposes but a lawyer could – and would – make it mean anything.'[56]

Greene responded to the Naval Law Branch's minute. He noted that the general question of whether there should be an international prize court had previously been decided and acquiesced in by the Admiralty. Moreover, the Naval Conference Committee's opinion was that the nation's interests would not suffer if the proposed compromises were made. Greene recognized that the position of Britain as a neutral had to be considered as well as when it was a belligerent. Even as a belligerent, Britain would have to consider the interests of neutrals, 'and except perhaps in the disputed issues of blockade and carriage of contraband, as to which we are prepared to negotiate, we should be obliged to limit our action in any circumstances.' He reminded that cases involving the seizure of enemy ships would not be within the International Prize Court's jurisdiction; only seizures of neutral vessels. Moreover, if Britain's powers now were compared with those during the last great naval war, the differences were due 'to the Declaration of Paris and the great change which has taken place in the maritime commerce of the world.' Greene also thought an 'arbitrary and unscientific' limit of 800 miles would result in disputes and opportunities for evasion 'near the outer fringe of the radius.'[57]

On the same day, the Naval Conference Committee presented a 'Further Report' that restated the need for a convention on agreed rules of law for application by the International Prize Court. Some long-held rules were not entirely 'applicable under modern conditions'. The committee had 'approached the consideration of the various points of controversy … with a desire to reconcile divergence where possible, and in other cases, where the divergences are too marked to be reconciled, to find materials for compromise'. The committee then reviewed its positions on the various

[56] Naval Law Branch, Minute, 24 Oct. 1908, ibid.

[57] Greene, Minute, 26 Oct. 1908, ibid.

topics for the conference. It thought agreement could be reached on lists of absolute and conditional contraband, but that neither food nor raw materials should be considered contraband unless destined for the enemy's armed forces. If a ship's destination was a neutral port, the contraband cargo could still be seized if its ultimate destination, whether by sea or land, was enemy territory. On blockade, the destination of the ship mattered, not the destination of the cargo. Recognizing that no serious limitation on Britain's ability to impose a blockade could be considered, the committee thought that the right of seizure of a blockading fleet should be 'defined as that of operating in an area sufficiently large to secure it from the danger of attack from the shore, and to enable it to effectively prevent entrance to or departure from the blockaded port or coast.'[58] Grey circulated the 'Further Report' to the Cabinet for approval, noting the only controversial sections were those dealing with blockade and transfer of title of merchant ships from belligerent to neutral owners.[59]

Slade concurred in Greene's minute.[60] First Lord McKenna concurred 'generally', noting that while 'there is a good deal in the remarks of N. L. Branch on the subject of blockades', the recommendation that the 800-mile radius rule should 'be preferred if the Conference will accept it.'[61] Fisher then wrote in his distinctive hand, initialled and dated: 'Concur generally in the summary pages 24 & 25' – referring to Slade's original memorandum – and 'Concur in A' – referring to McKenna's preference for the 800-mile rule.[62]

Two weeks later, McKenna, Fisher, the Second Sea Lord, Greene, and Slade met to 'discuss the attitude that should be taken up by the Admiralty' at the forthcoming conference. Slade thought the discussion of blockade by McKenna showed 'that he had not the smallest conception of what was meant. … The second sea lord was not much better.' However, after an hour's discussion 'they eventually decided to accept the views that [Slade] had put forward.' At the meeting, Fisher 'produced some wonderful statements, and they were swallowed by McKenna with

[58] Naval Conference Committee, 'Further Report', 26 Oct. 1908, ibid.

[59] Grey, Minute, 3 Nov. 1908, CAB37/95/132.

[60] Slade, Minute, 27 Oct. 1908, ADM 116/1079.

[61] McKenna, Minute, 27 Oct. 1908, ibid.

[62] Fisher, Minute, 29 Oct. 1908, ibid.

evident gusto.' Slade thought it was 'astonishing how [Fisher] forces his views … down every body's throat.'[63] The participants agreed that, 'it was desirable to adopt the suggestion to treat 'Rayon d'action' as governing the powers of seizure under International Law.' The group recognized it would be difficult to seize neutral ships bound for a blockaded port when there was an adjacent neutral port to which they could claim they were destined. The concept of 'rayon d'action' therefore was more advantageous because it provided the 'greatest latitude to the blockading force and permitted … the widest dispersal of that force' in order to stop all trade with a blockaded port. 'The effect of such a definition would be determined by the size of the force employed to maintain and support the blockade.' The Admiralty therefore authorized its representatives at the conference to adopt the positions described in Slade's memorandum.[64]

Grey circulated a summary of the positions expressed in the memoranda received from the invited countries as well as Britain's observations on those views. This document, later known as the 'red book,' served as a basis for the deliberations at the conference. The summary and observations indicated areas of agreement and points where 'common experience' and 'modern developments of maritime commerce, navigation, and war' made it possible to state general principles of international law apparent from each nation. Grey reiterated that the goal of the conference was not to make new law, as at the 1899 and 1907 Conferences, but rather to state 'a common law of nations' to be contained in the proposed declaration.[65]

The instructions to the British and American delegations were quite different. International law Professor George C. Wilson joined Admiral Stockton as the United States' two plenipotentiaries to the conference. Wilson had commented on Stockton's draft of the US Naval War Code and had led the summer international law discussions at the Naval War College since 1902. Stockton and Wilson were to be guided 'in the consideration of any matter discussed at the Conference by the general and specific

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[63] Slade diary, 12 Nov. 1908, MRF 39/2, Slade Papers.

[64] McKenna, Minute, 18 Nov. 1908, ADM 116/1079.

[65] Grey to His Majesty's Representatives, 10 Nov. 1908, *International Naval Conference*, 18-19; Grey to His Majesty's Representatives, 14 Nov. 1908, ibid., 20. The document summarizing the views expressed by the invited powers and Britain's observations is in Scott, ed., *London Declaration*, 20-111.

provisions of the instructions [from the 1907 Conference] relating to maritime warfare and the rights and duties of neutrals.' They were to use the 1900 Naval War Code and suggested amendments from 1903 as the basis for discussions and 'to secure as far as possible the adoption in conventional form of their provisions.'[66] Thus, the United States' instructions were general and based on analyses prepared in 1900 and 1903.

In contrast, Grey's instructions to Britain's delegation provided relatively precise guidance on each of the subjects to be considered. For example, absolute and conditional contraband would be recognized but the items in each category should be identified. Britain's 'absolute dependence' on blockade for its security meant it was 'imperative' to maintain that weapon intact. Recognizing that modern armaments necessitated that any blockade fleet be stationed a considerable distance from the coast or ports blockaded, a rule defining *rayon d'action* as 'the area of operation of the blockading force' would be acceptable and would 'safeguard all belligerent rights in regard to blockade which Great Britain has been able practically to assert in former wars,' while also reassuring neutrals that their ships would not be subject to seizure until actually approaching a blockade. On continuous voyage, neutral ships were subject to seizure if carrying contraband destined for the enemy, whether direct or via some intermediate conveyance by land or sea from a neutral port. Specific directions also were provided on the other topics. Grey reminded the delegates to ensure that those belligerent rights 'which have been proved in the past to be essential to the successful assertion of British sea power, and to the defence of British independence, are preserved undiminished and placed beyond rightful challenge.' At the same time, 'the widest possible freedom for neutrals … should remain before your eyes as the double object to be pursued'.[67] With this guidance, the British delegation certainly understood that Britain's belligerent rights had to be satisfactorily maintained.

[66] Root to Stockton and Wilson, 21 Nov. 1908, in Scott, ed., *London Declaration*, 190-195.

[67] Grey to Desart, 1 Dec. 1908, *International Naval Conference*, 20-32.

Confrontation and Compromise

The conference opened at the Foreign Office on 4 December with a 'rather colourless' speech by Grey.[68] It adjourned from 18 December until 11 January 1909, and concluded on 26 February.[69] Slade thought the US would support Britain's views, but that Germany was 'going to take a very uncompromising attitude' and would give Britain 'a great deal of trouble'.[70] The US viewed Slade as 'the mouthpiece of the British Navy.' Ottley rarely spoke.[71] Britain's expectation of close cooperation with the US soon evaporated. The lack of specific instructions meant the US delegates had to seek guidance or approval at almost every turn, which often required the State Department to obtain the views of the Navy before responding. This poor diplomatic practice often delayed the American delegation in stating the country's definitive position on an issue. On more than one occasion, the US delegates provisionally indicated their concurrence with a decision of the conference, only to later receive contrary instructions.[72] The first major question was whether the US should forego its long-time adherence to the doctrine of continuous voyage. Secretary Root did not consult the Navy on that issue. His response was unequivocal: 'The United States will certainly not consent to the surrender of that doctrine unless there are weighty reasons of which I am not now advised.'[73] By 15 December, Stockton reported that while all the powers were conciliatory, Germany would not accept the United States' view of continuous voyage. However, it might be possible to obtain the abolition of conditional contraband in exchange for yielding on continuous voyage.[74]

Whether to give up continuous voyage as applied to contraband also was a significant issue for Britain. Ominously for the future, Slade reported that Germany

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[68] Stowell to Scott, 5 Dec. 1908, box 7, folder 10, JBScott/Georgetown Papers.

[69] See British Delegates to Grey, 1 Mar. 1909, *International Naval Conference*, 93; Stowell to Scott, 18 Dec. 1908, box 7, folder 10, JBScott/Georgetown Papers.

[70] Slade diary, 1 Dec. and 4 Dec. 1908, MRF 39/2, Slade Papers.

[71] Stowell to Scott, 18 Dec. 1908, box 7, folder 10, JBScott/Georgetown Papers.

[72] See, for example, Slade diary, 23 Jan. 1909, MRF 39/2, Slade Papers; Stockton to Root, 25 Jan. 1909, RG 59, NF 12655 – M862, roll 823, NARA(II).

[73] Root to Stockton, 14 Dec. 1908, RG 59, NF 12655 – M862, roll 822, NARA(II)

[74] Stockton to Root, 15 Dec. 1908, ibid.

'does not consider there is any International Law binding on all nations, and that, therefore, a simple declaration of the rules of what other Powers may consider to be existing law is of no value at all.' Nevertheless, Germany was 'willing to make a deal' and would agree to England's proposed lists of absolute and conditional contraband as suggested at the 1907 Conference in return for Britain giving up continuous voyage. Such an agreement would avoid the issues that arose in the Russo-Japanese War regarding declarations of contraband items. Slade recognized the significant implications of such a deal, which 'would prevent our stopping the whole of the German trade by sea,' because part of it could continue through neutral Belgian and Dutch ports. However, he concluded that the value of the doctrine to Britain was 'very doubtful' for several reasons. First, it likely would not affect the enemy much. Additionally, Britain's experiences in the South African War militated against the doctrine. Although attempts to apply it caused great difficulties and cost to the Boers, Britain 'did not maintain our rights intact because we did not wish to add to our enemies by bringing Germany in, and yet, at the time, we had absolute command of the sea, and we were, relatively to the Germans, in just as good a position as we are at the present day, if not better.'[75] However, Germany thought Britain placed a high value on continuous voyage. Slade therefore believed England should get more in return for abandoning continuous voyage than just agreed lists of absolute, conditional, and 'non' contraband. He thought Germany should compromise on its position that a belligerent had the right to sink neutral prizes. This right was of no value to Britain as a belligerent, but if Germany would restrict this right to limited situations, with payment of compensation required, British maritime trade would gain significantly. Regarding the right to transform a neutral ship into a warship on the high seas, Slade's opinion was that Britain should never yield on this point to Germany.[76]

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[75] Slade, Memorandum, 14 Dec. 1908, ADM 116/1079. Slade does not appear to have communicated substantively with Julian Corbett regarding the conference. His one communication to Corbett during the proceedings discusses Corbett and Mahan's articles on immunity of private property at sea and the book Mahan published including them. Slade told Corbett he was 'just worked off my legs at present. The Conference is quite sufficient alone,' but he had other work to do, too. Slade to Corbett, 12 Dec. 1908, CBT 13/2, Sir Julian Stafford Corbett Papers, National Maritime Museum, Greenwich, UK.

[76] Ibid.

The Naval Law Branch stated that if continuous voyage as applied to contraband was abandoned, Britain would give up the right to seize neutral ships carrying contraband destined for the enemy if: (1) the ship first stopped at a neutral port before continuing to an enemy port, and (2) the ship's final destination was a neutral port. The Law Branch could not express any opinion as to the relative value vis-à-vis the proposed lists of contraband items and restricting the right to sink neutral prizes.[77] Assistant Secretary Greene agreed that the relative value of the doctrine of continuous voyage depended on what was or was not contraband, ignoring the difficulties of determining its ultimate destination. In contrast, an agreement itemizing contraband would greatly benefit Britain, both as a belligerent, because it would be clear what goods could be seized, and as a neutral, given the size of its merchant marine. Whatever the decision, the law of blockade would not be limited. Greene agreed that Britain should insist on its positions regarding a belligerent's right to sink neutral prizes and the conversion of merchant ships into warships on the high seas. He discussed his views with Second Sea Lord Admiral William May and DNI Slade.[78]

Whether to bargain away continuous voyage in return for Germany agreeing to Britain's lists of contraband and 'free' goods was the subject of a meeting on 15 December between Foreign Secretary Grey, First Lord McKenna, and the members of the British delegation. The discussions and the alleged disagreement between Grey and McKenna as to its outcome have been the subject of much discussion by historians.[79] Slade apparently prepared the initial draft of the meeting minutes.[80] The draft indicated that McKenna strongly asserted that continuous voyage was valuable to Britain as a belligerent, especially in a war against Germany. Even if goods were not seized, freights and insurance would rise due to the risk of seizure. Grey thought otherwise and pointed out the difficulties of determining the ultimate destination of

[77] Naval Law Branch, Minute, 14 Dec. 1908, ibid.

[78] Greene, Memorandum, 15 Dec. 1908, ibid.

[79] See, for example, Coogan (1981), 117-120; N. Lambert (2012), 97-99.

[80] See Greene to Crowe, 23 Dec. 1908, ADM 116/1079 ('The First Lord has carefully considered the amendments … to the record of the meeting … which you sent back to me by Admiral Slade.') (Emphasis added). Admiral Slade unlikely acted as a mere messenger.

the goods. Neutrals likely would protest as during the South African War and Britain would have to retreat from its position. Grey thought institution of the International Prize Court was important and 'therefore certain concessions, not of vital importance, might be made in order to prevent the present Conference from coming to a barren conclusion.' After discussing the issues of sinking neutral prizes and conversion of merchant ships to warships on the high seas, Grey authorized Britain's delegates to surrender continuous voyage in return for Germany's agreement on the three lists of contraband and restrictions on the right to sink neutral prizes. The delegates were to maintain Britain's position on the conversion of merchant ships, but 'failing acceptance the best possible arrangement [was] to be made.'[81]

After review, Grey suggested three additions to the draft minutes. The first was his further response at the meeting to McKenna's arguments, in which Grey stated the value of abandonment of continuous voyage to Britain when it was a neutral. The second and third proposed additions made clearer that Britain might not sign the prize court convention or refuse its jurisdiction in cases involving the sinking of neutral prizes or conversion of merchant ships if no satisfactory agreement on those issues was obtained.[82] McKenna agreed with Grey's proposed second and third additions to the draft minutes. However, he thought the first suggested addition did not accurately or completely state his arguments at the meeting. McKenna had argued that the issue had to be considered from the point of view of Britain as the stronger naval power in war. From this standpoint, the gain to Britain as a neutral in war if continuous voyage was surrendered was greatly outweighed by the gain to Germany from access to neutral ports in a war with England. 'It might be true that there would be difficulty in proving the "continuous" carriage of contraband … and that it might not be possible to ignore the protests of a strong neutral; but a serious hindrance to this part of Germany's trade, coupled with a blockade of her own ports, could not fail to be of the first importance to us in war.' McKenna understood that

[81] Naval Conference Minutes (draft), n.d. (but after 15 Dec. 1908), ibid.

[82] See Grey, Draft Insertions (A), (B), and (C), n.d. (but after 15 Dec. 1908), ibid.

Britain's delegation therefore would not surrender continuous voyage unless Germany relinquished its view on sinking neutral prizes.[83]

Grey responded by recounting his understanding of the discussions. He had strongly argued that the conference should not break down on the issue of continuous voyage, because the doctrine was not as important to Britain as blockade, and practically would be of little use in war. He understood the meeting's conclusion to be that the delegates were authorized to abandon continuous voyage in return for an agreement on contraband. If Germany would 'agree to leave Absolute Contraband subject to … continuous voyage, so much the better.' However, if the other powers insisted on the right to sink neutral ships, the Admiralty could ask the Cabinet to decide if that was so serious an issue that Britain should not sign the prize court convention or retain the right to 'take the law into our own hands' if a belligerent sank a neutral British prize.[84] After seeing Grey's minute, McKenna said 'there was a misunderstanding & … there was no substantial difference of opinion between himself & Sir E. Grey in regard to the decision arrived at at [*sic*] the meeting'. McKenna agreed with Grey's proposal to insert his original three additions as well, with all but the first sentence and concluding paragraph of McKenna's minute.[85] McKenna also wrote personally to Grey 'to remove any impression … that I intended to back out of the arrangement we agreed at the conference.' McKenna quoted Grey's statement of understanding from the latter's minute of 26 December and indicated he entirely agreed.[86] Thus, the final meeting minutes included not only Grey's proposed additions, but also McKenna's further response to Grey's argument on the value of continuous voyage to Britain.[87]

Britain and Germany soon reached an understanding on Britain's classes of contraband and 'free' goods, and elimination of the doctrine of continuous voyage except for absolute contraband, for which it was retained. The categorizations

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[83] McKenna, Minute, 22 Dec. 1908, ibid. See also Greene to Crowe, 23 Dec. 1908, ibid. (enclosing McKenna's minute).

[84] Grey, Minute, 26 Dec. 1908, ibid.

[85] Greene to Crowe, 30 Dec. 1908, ibid.

[86] McKenna to Grey, 1 Jan. 1909, FO 800/87.

[87] See Naval Conference Minutes, n.d. (but after 30 Dec. 1908), ADM 116/1079.

favoured Britain and resolved issues that had arisen during the Russo-Japanese War. Foodstuffs and fuel were included in the list of 'conditional contraband', while raw cotton and numerous raw materials were 'free' goods that could never be considered contraband.[88] Moreover, Germany even would 'go some way to meet [Britain] with regard to destruction of neutral prizes.' However, the US now was the impediment to an agreement. While it agreed with the lists of absolute and conditional contraband, it would not surrender continuous voyage at all, even if that broke up the entire conference.[89] The American delegates thought the US should agree to the compromise on continuous voyage. They warned that the country would 'incur odium and damage [its] international influence' if it maintained its position and was held responsible for breaking up the conference.[90] Stockton thought the 'military value of continuous voyage [was] exaggerated.' In return for surrendering the right as to conditional contraband, 'Continentals give up requirements of special notification at line of blockade, and claims for unlimited destruction of neutral prizes.'[91] Secretary Root agreed to abandon continuous voyage, but only if conditional contraband was abolished. Not surprisingly, the other nations refused to agree to the new condition. Stockton again pleaded with Root to accept the British-German compromise, because the 'military value of continuous voyage for blockade and conditional contraband [w]as occasional and secondary.' Moreover, its abolition was 'of great value' to America's trade as a neutral.[92] Finally, the US conceded the point. Stockton's announcement of the change in position was greeted with 'great applause'.[93]

However, the US soon quashed any thought the conference now would proceed smoothly to conclusion. While it agreed to some proposals, on many it refused or nit-picked the wording. For example, Stockton favoured the agreement on

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[88] See Scott, ed., *London Declaration*, 148-152.

[89] Slade diary, 8, 10, 14, 15, and 23 Jan. 1909, MRF 39/2, Slade Papers; Stockton to Root, 13 Jan. 1909, RG 59, NF 12655 – M862, roll 823, NARA(II); Root to Stockton, 18 Jan. 1909, ibid.; Root to Stockton, 20 Jan. 1909, ibid.

[90] Stowell to Scott, 21 Jan. 1909, ibid.

[91] Stockton to Root, 23 Jan. 1909, ibid.

[92] Root to Stockton, 23 Jan. 1909, ibid.; Stockton to Root, 25 Jan. 1909, ibid.

[93] Root to Stockton, 26 Jan. 1909, ibid.; Slade diary, 27 Jan. 1909, MRF 39/2, Slade Papers.

the scope of a blockade being the *rayon d'action* of the blockading force, which was 'elastic, varying according to circumstances'.[94] However, the US insisted that the domicile of the actual owner, not the nationality, would determine ownership of property on a belligerent merchant ship.[95] Slade wrote, 'The Americans are impossible and there is strong probability of their wrecking everything'.[96] The US would not agree that a member of the enemy armed forces found on board a neutral ship could be made a prisoner of war, because this 'gives [the] right of visit and search without seizure of [the] ship.'[97] It asked for a special protocol or convention allowing the International Prize Court to act as a court of arbitration in order to overcome issues with the US Constitution. Because the US Supreme Court was the final appeal level for all court decisions, including prize court rulings, establishing an international prize court above the Supreme Court created difficulties under the US Constitution.[98] By 18 February, all issues had been resolved except for the US demand for a separate protocol regarding the prize court acting as a court of arbitration.[99] Foreign Secretary Grey then met with the American ambassador and suggested the conference issue a *vœu* in favour of such a protocol in the future, which Britain would support.[100] Finally, the US accepted the suggested course of action.[101] On 26 February the conference met in plenary session and signed the 'Declaration Concerning the Laws of Maritime War'.[102]

The Admiralty viewed the results of the conference favourably. DNI Slade prepared a memorandum based on the draft proof of articles of the convention, which was referred to First Sea Lord Fisher and First Lord McKenna. Slade stated, 'Taking the draft as a whole, the majority of the proposed rules follow our existing law.' He

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[94] Stockton to Root, 29 Jan. 1909, RG 59, NF 12655 – M862, roll 823, NARA(II).

[95] Stockton to Bacon, 29 Jan. 1909, ibid.; Bacon to Stockton, 2 Feb. 1909, ibid.; Bacon to Stockton, 5 Feb. 1909, ibid.

[96] Slade diary, 5 Feb. 1909, MRF 39/2, Slade Papers.

[97] Stockton to Bacon, 9 Feb. 1909, NF 12655 – M862, roll 823, NARA(II).

[98] See Stockton to Bacon, 12 Feb. 1909, ibid.

[99] Stockton to Bacon, 18 Feb. 1909, ibid.

[100] Reid to Bacon, 23 Feb. 1909, ibid.

[101] Bacon to Reid, 124 Feb. 1909, ibid.

[102] Scott, ed., *London Declaration*, 112.

identified seven 'principal concessions' that Britain had made, but some of these 'concessions' were limited or had countervailing benefits. For example, while Britain had abandoned the doctrine of continuous voyage as to conditional contraband, 'it was of no practical value as in most cases it would be impossible to obtain the requisite proof.' Slade considered 'substitution of the "rayon d'action" of the blockading squadron as the limit within which seizure is allowed for breach of blockade' to be a concession. He was concerned how British prize courts would receive 'this very shadowy & indefinite clause' because they had not previously accepted it. Slade noted that the Law Officers in 1900 had recommended acceptance of the rule, now agreed, that members of the enemy armed forces found on board a neutral passenger ship could be taken as prisoners of war. Britain also had accepted that neutral merchant ships convoyed by neutral warships were not subject to search or seizure. Slade concluded, 'On the other hand the continental powers have made very considerable concessions to us and have in most points accepted the rules which have been administered by our courts.'[103]

Greene was more positive in his analysis. Regarding continuous voyage, he thought:

> It will be seen that as regards "continuous voyage" the concession proposed falls short of what was under consideration when the subject was before their Lordships in December last. The rule is maintained intact as regards "Absolute contraband", and, as regarding "conditional contraband" shipped for a country with no seaboard, such as the Transvaal in the late war, the belligerent would have the same rights as if it were shipped to a hostile port.[104]

Rather than concede anything on converting merchant ships on the high seas, the issue was omitted entirely from the convention.[105] While England's position on destruction of neutral merchant ships was not accepted, strict conditions were established 'which should prevent the right from being much abused.' Britain

[103] Slade, Minute, 18 Feb. 1909, ADM 116/1079.

[104] Greene, Minute, 19 Feb. 1909, ibid.

[105] For a discussion of the conference's deliberations focused on this issue, see Seligmann (2012), 98-100.

obtained a favourable agreement on transfer of enemy ships to a neutral nation after the outbreak of war. On blockade, England carried entirely its 'view that the blockade of an enemy's port or coast should not, as regards capture of neutral vessels, be restricted to a limited cordon of vessels off the blockaded area. The "radius of action" should give that elasticity to the action of a blockading fleet which is actually essential.' Finally, lists of absolute and conditional contraband were agreed to, as well as a 'free' list of goods that could not be declared contraband. Greene noted, 'We secure three definite lists of contraband … which in the absence of total abolition of contraband is what was aimed at during the Hague Conference – though the lists are not as satisfactory from our point of view as could have been desired.'[106] He then concluded:

> The general result seems to be that as a neutral Great Britain gains, and as a belligerent, while she loses claims to the exercise of some extreme rights which have been put forward on her behalf, she gains in the clearer definition of a belligerent's powers of action under international law, and in being able to act against neutral trade with an enemy within the powers reserved, without difficulties such as those which arose in the case of the South African war.[107]

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[106] Greene, Minute, 19 Feb. 1909, ADM 116/1079.

Absolute contraband included arms, projectiles and cartridges, powder and explosives specially for use in war, gun-mountings, armour plates, warships, horses and mules suitable for use in war, and articles intended exclusively for military use. Conditional contraband included foodstuffs, forage and grain for animals, clothing and apparel suitable for use in war, gold and silver coin or bullion; vehicles of all kinds, railway materials and rolling stock, balloons, wireless telegraph equipment, fuel and lubricants, horseshoes, field glasses and telescopes, harness and saddler. 'Free' goods that could not be declared contraband of any type included raw materials for textiles, rubber and resins, oil seeds and nuts, raw hides, natural and artificial fertilizers, metallic ores, paper, soap, varnish, bleaching powder, soda ash, ammonia, agricultural, mining and printing machinery, precious and semi-precious stones, clocks, fashion goods, and articles of household or office furniture. The 'free' list was based on information provided by the Board of Trade and provided obvious benefits to British manufacturing industries. See British Delegates to Grey, 1 Mar. 1908, *International Naval Conference*, 95.

The complete lists may be found at Scott, ed., *London Declaration*, 117-119.

[107] Green, Minute, 19 Feb. 1909, ADM 116/1079.

First Lord McKenna approved and agreed with Greene's analysis.[108]

Eyre Crowe agreed that the results of the conference were favourable. He told Ernest Satow, 'I think you will find that we have done fairly well. The preliminary article of the Declaration lays down that the rules now agreed upon represent substantially the existing law. This is the compromise we have had to make with the Germans. It gives us really all we want. The Admiralty are quite satisfied with the whole result.'[109]

The final report of the delegation to Foreign Secretary Grey was equally positive. It concluded that it 'is a matter for congratulation that in respect to the important subject of blockade we have been able to secure full recognition of the principles on which you directed us to lay stress.' This included adoption of the area of operations of the blockading ships as the area within which capture is authorized. Notice of a blockade now could be through a general announcement. In order to obtain agreement on itemization of contraband, a concession was made regarding application of the doctrine of continuous voyage to contraband. However, the continuous voyage doctrine was maintained for absolute contraband. Moreover, if more than one-half of the cargo on a neutral ship was found to be contraband, the entire ship could be seized. The other topics had resulted in either agreement with no adverse consequences for Britain or no agreement, thereby allowing Britain to continue to assert its position on those topics.[110] Grey asked the Cabinet to authorize the British delegates to sign the convention, because the conclusions were 'in accordance with the instructions already approved'.[111]

The American delegation similarly thought the Declaration was favourable. Stockton and Wilson believed the description of the area in which neutral ships were liable to seizure for violation of a blockade – 'the area of operations of the war-ships detailed to render the blockade effective' – was favourable. In surrendering continuous voyage as applied to conditional contraband and blockade, the US 'gave

[108] McKenna, Minute, 22 Feb. 1909, ibid.

[109] Crowe to Satow, 26 Feb. 1909, PRO 30/33/12/4.

[110] British Delegates to Grey, 1 Mar. 1908, *International Naval Conference*, 93-104.

[111] Grey, Minute, 19 Feb. 1909, CAB 37/98/33.

up a belligerent right now regarded as of little value.' Determining the ultimate destination of conditional contraband would be difficult at sea, and freeing 'such articles from the fetters of the continuous-voyage doctrine' would be very valuable to the US merchant trade when the country was a neutral. Destruction of neutral prizes was allowed only under 'exceptional circumstances'.[112] State Department Solicitor James Brown Scott, who had been at the 1907 Conference, separately analysed the proposed Convention and the delegation's report. He concluded that while the 'United States was asked to surrender certain of its cherished and fundamental doctrines' on continuous voyage and enemy domicile, the 'Continental Powers were likewise forced to concede certain principles to which they attached great importance, especially' regarding blockade and destruction of neutral prizes. He recommended that the Convention be submitted to the Senate for approval.[113]

Analysis: A Good Deal Lost

Given the approbation of the conference's results by participants, the Admiralty and the Foreign Office, as well as the United States, the Declaration of London seemed destined for ratification. Despite the difficult negotiations and grudging acceptance of many of its provisions, almost no opposition to the Declaration occurred in the US. The General Board of the Navy approved the Declaration in September 1909, and the US Naval War College then amended the Naval War Code to comport with its provisions. After ratifying the International Prize Court Convention in February 1911, the US Congress approved the Declaration of London on 24 April 1912.[114]

However, the Declaration was subjected to intense criticism in Britain. The subsequent arguments and debates that led to its rejection have been analysed repeatedly.[115] Opponents to the Declaration primarily raised two arguments against it,

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[112] Stockton and Wilson to Bacon, 2 Mar. 1909, in Scott, ed., *London Declaration*, 196-206.

[113] Scott to Bacon, 15 Mar. 1909, NF 12655 – M862, roll 823, NARA(II).

[114] Editorial Comment, 'Approval of the Declaration of London by the United States Senate on April 24, 1912', *The American Journal of International Law* 6, no. 3 (July 1912): 723-725; Coogan (1981), 126-127.

[115] See, for example, Coogan (1981), 125-147; Offer (1989), 275-281; Martin, 'Declaration of London', 736, 749-752.

neither of which withstands scrutiny. First, opponents claimed that the Declaration unduly restricted Britain's rights as a belligerent by permitting only a traditional close blockade of an enemy's coast and ports. However, modern naval weapons, such as torpedo boats, mines, and submarines made such traditional close blockades impractical if not impossible.[116] John Coogan concludes that, 'Fisher, Arthur Wilson, Slade, Ottley, and other senior officials simply did not understand that the technological changes which made close blockade suicidal had rendered an effective commercial blockade of Germany impossible.'[117] Coogan's conclusion is contrary to everything known about these officers and an arrogant assumption. His view that senior Admiralty officials did not understand that technological changes precluded a traditional close blockade – an argument concocted and promoted by Maurice Hankey[118] – is wrong. It ignores that in the Declaration, the area of operations of blockading warships was the area within which seizures could occur. It also ignores the *Rapport* of the Drafting Committee to the conference, which made clear that Article 17, which contained the concept of *rayon d'action*, was adopted in light of 'all modern means of defence.'[119] Article 17, along with the provisions that general notice of a blockade was sufficient and whether a blockade was 'effective' was a question of fact (and that a single ship could effectively blockade a port), allowed for execution of a blockade under modern, distant conditions. The 'obvious and immediate effect upon the operational ability of the navy was that the new interpretation of commercial blockade under the Declaration of London freed it from conducting a close commercial blockade off the coast and ports of the enemy, thereby

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[116] Coogan (1981), 125-135; Hankey, 'The Effect of the Declaration [on] Great Britain's Belligerent Rights', Feb. 1911, HNKY 7/5, ff. 2-9, Archives of Lord Hankey of the Chart (Maurice Hankey), GBR/0014/HNKY, Churchill Archives Centre, Churchill College, Cambridge, UK (hereafter Hankey Papers).

[117] Coogan (1981), 239.

[118] See Lord Hankey, *The Supreme Command: 1914-1918* (London: Allen and Unwin, 1961), I: 98-101. Ottley, then secretary to the CID, thought there 'appears no reason to reject the Declaration of London in order to obtain the liberty of action' which Hankey believed necessary for a war with Germany. Ottley, 'Remarks on Captain Hankey's paper', Inclosure to Ottley to McKenna, 17 Feb. 1911, ADM 116/1236, reprinted in Nicholas Tracy, ed., *Sea Power and the Control of Trade: Belligerent Rights from the Russian War to the Beira Patrol, 1854-1970* (Aldershot, UK: Ashgate, 2005), 153-158.

[119] Drafting Committee, 'General Report Presented to the Naval Conference on Behalf of Its Drafting Committee', Feb. 1909, *International Naval Conference*, 41-42.

reflecting the operational limitations imposed by mutual sea denial.'[120] The Royal Navy wanted an 800-mile radius of action at the 1907 Conference. In the Declaration of London, it got more: an 'elastic' area that only the Royal Navy could effectively impose and enforce against other Continental powers, including Germany.

Second, opponents argued that the Declaration unreasonably limited neutral rights and expanded belligerent rights to the detriment of Britain's ability to maintain its food supply during war. The Declaration classified foodstuffs as conditional contraband. Conditional contraband presumptively could be seized if 'consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy.' Moreover, the Declaration stiffened the proof required to justify seizure of conditional contraband in Article 35.[121] According to opponents, Britain's food supply therefore could be interdicted even if such goods were on board neutral merchant ships, because every viable port in Britain arguably was fortified or near a military base.[122] This argument relied on reading the word 'enemy' in Article 34 broadly, as not limited to 'the enemy government'. Again, the *Rapport* of the Drafting Committee shows that 'enemy', as used in the context of Articles 30, 33, and 34, meant 'a fortified place belonging to the enemy or a place used as a base'.[123] Neutral vessels whose goods were not consigned directly to the enemy government or its agent therefore were not presumptively subject to seizure if bound for most ports. Moreover, the Declaration's drafters had opposed successfully a German attempt to broaden 'base' to include 'any port in the neighbourhood of which a military garrison, however insignificant in size was stationed.'[124] Eyre Crowe told Ernest Satow that

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[120] Martin, 'Declaration of London', 748-749. See also ibid., 741, 745-749.

[121] Scott, ed., *London Declaration*, 120-121; Drafting Committee, 'General Report', *International Naval Conference*, 49-50.

[122] Coogan (1981), 126, 128-134; Hankey, 'The Effect of the Declaration of London on Food Supply', Feb. 1911, HNKY 7/5, ff. 10-12, Hankey Papers. This also was the argument presented by 138 admirals of the Imperial Maritime League. Imperial Maritime League, 'The Declaration of London', 29 May 1911, Inclosure to Imperial Maritime League to Asquith, 3 July 1911, ADM 116/1236, reprinted in Tracy, ed., *Sea Power and the Control of Trade*, 159-163.

[123] Drafting Committee, 'General Report', *International Naval Conference*, 48-49.

[124] Crowe to Satow, 15 Mar. 1909, in G.P. Gooch and Harold Temperley, eds., *Arbitration, Neutrality and Security*, vol. VIII of *British Documents on the Origins of the War, 1898-1914* (London: HMSO, 1932), 349-350.

'enemy' could only be interpreted to mean 'the enemy government' in light of Articles 33 and 34.[125] Professor John Westlake of Cambridge University reassured Satow that 'enemy' in Article 34 could 'only mean *the enemy state*, that being the regular meaning of the phrase in French when there is nothing in the context to qualify it.'[126] Thus, the report of the Drafting Committee, the drafting history, and normal interpretation of the critical words renders the second primary argument of the Declaration's opponents meritless. Far from unduly broadening belligerent rights against neutrals, the Declaration expanded neutral rights to the benefit of Britain.

In light of these facts, historians have struggled to explain adequately Britain's supposed failure to protect its belligerent rights at the London Conference.[127] Several historians have argued that the Declaration of London was inconsistent with the Admiralty's war plans against Germany.[128] However, such arguments rest on the belief that the 1907 War Plans were mere 'propaganda' and ignore the recently rediscovered 1909 War Plans.[129] The Admiralty's strategy for war with Germany, especially as embodied in the 1909 War Plans, envisioned an observational blockade of Germany's ports and coasts, with several layers of warships stationed at greater distances.[130] The Royal Navy's war plans, therefore, were consistent with the concept of a *rayon d'action* for the enforcement of a blockade. Other proffered explanations are not only unsatisfactory, they fail to account for the undisputed facts and instead allege mendacity and incompetence on the part of the Admiralty. Sir Hew Strachan

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[125] Crowe to Satow, 11 Apr. 1909, PRO 30/33/12/4.

[126] Westlake to Satow, 15 Apr. 1909, in Gooch and Temperley, eds., *Arbitration, Neutrality and Security*, 369-370 (emphasis in original).

[127] N. Lambert (2012), 131; Martin, 'Declaration of London', 732; Offer (1989), 276.

[128] See, for example, Coogan (1981), 108-109, 117-121, 239; N. Lambert (2012), 95; Offer (1989), 277.

[129] Matthew S. Seligmann, 'Naval History by Conspiracy Theory: The British Admiralty before the First World War and the Methodology of Revisionism', *The Journal of Strategic Studies* 38, no. 7 (Nov. 2015): 972-978. See also David Morgan-Owen, '"History is a Record of Exploded Ideas": Sir John Fisher and Home Defence, 1904-1910', *International History Review* 36, no. 3 (Oct. 2014): 550-572.

[130] 'War Plan G.U. War Orders for the Commander-in-Chief of the Home Fleet', 1909, MSS 253/84/3, Papers of Thomas Crease, National Museum of the Royal Navy, Portsmouth, UK. See Morgan-Owen, 'Exploded Ideas', 566-568; Seligmann, 'Naval History by Conspiracy Theory', 975-978. (I am indebted to Dr. Richard Dunley for sharing a copy of War Plan G.U.)

simply concludes, 'The only rationalization of the Admiralty's, and of Fisher's, position is hard-headed cynicism: that in the event of Britain being at war the declaration [of London] would be neglected, in the event of neutrality, it would be enforced.'[131]

John Coogan, Avner Offer, and Nicholas Lambert have presented explanations for Britain's alleged irrational expansion of neutral rights and surrender of belligerent rights at the London Conference. Coogan contends 'second thoughts' arose on surrendering continuous blockade at the meeting on 15 December 1908.[132] Offer claims that McKenna attempted to 'throw a spanner in the works' in mid-December 1908 when the Admiralty agreed the doctrine of continuous voyage could be abandoned. Noting Fisher's statement during the conference that 'in the next war … we should most certainly violate the Declaration of Paris and every other treaty that might prove inconvenient', he posited a Machiavellian strategy by Fisher, who had no intention of following any international agreement limiting Britain's belligerent rights. He also suggests that neither Slade nor Ottley, both of whom allegedly were losing Fisher's confidence at the time, received a proper briefing and so took positions inconsistent with Fisher's plans. 'Fisher may have allowed Ottley and Slade to get on with the job in the interest of good relations with the Liberal government, and also as a subterfuge which might create false confidence in Germany.'[133]

Most recently, Nicholas Lambert has claimed a 'hitherto kept secret' plan for 'economic warfare' against Germany that was unveiled by Fisher in late 1908. For Lambert, the various approvals by the Admiralty of the positions to be taken at the conference 'did not constitute total approval.' Grey misled McKenna into believing continuous voyage would not be compromised unless Germany gave up much more than it had offered as of 15 December 1908. Lambert speculates that McKenna gave in to Grey because he recognized 'inevitable defeat on a seemingly minor technical

[131] Hew Strachan, *To Arms*, vol. I of *The First World War* (Oxford, UK: Oxford University Press, 2001), 401.

[132] Coogan (1981), 117-120.

[133] Offer (1989), 277-279, quoting Crowe, Minute, 24 Dec. 1908, FO 371/794, f. 146. Offer also quotes Fisher's letter to Esher in 1912, in which he regretted that his purported statements at the 1899 Conference were considered too extreme to print. Ibid., 278, quoting Fisher to Esher, 25 Apr. 1912, *FGDN II*, 453. How that alleged regret supports Offer's position is not clear.

point' and because 'he may have wanted to keep his powder dry' in anticipation of the upcoming debate on the number of capital ships to be laid down the next year. Lambert argues Fisher officially objected to the London Conference without success. He relies on some of Fisher's typical outlandish statements, including the same one quoted by Offer. 'Fisher believed that it would prove cost-effective for Britain cynically to disregard the law and accept the financial penalty afterward.' The Admiralty, including McKenna, had a 'cavalier attitude toward the sanctity of international agreements.' Remarkably, Lambert baldly asserts that McKenna misled the House of Commons in 1911 when he stated the Board of Admiralty was consulted before the declaration was signed and that both he and the Board supported it.[134]

As any good trial lawyer knows, to be valid, a 'theory of the case' must fit all the known facts. The arguments presented by Coogan, Offer, and Nicholas Lambert fail the 'fit' test. First, the discussions and memoranda arising from the meeting on 15 December among Grey, McKenna, and the British delegates do not indicate 'second thoughts', an attempt by McKenna to engage in sabotage, or an effort by Grey to hoodwink McKenna. Nicholas Lambert's speculation about the reasons for McKenna's actions is just that, speculation. It is not based on evidence, and therefore does not constitute a sound argument. Fairly read, the meeting minutes and communications exchanged reveal a full ventilation of the pros and cons of whether to surrender continuous voyage and what to demand in return. Coogan, Offer, and Lambert ignore the fact that Britain obtained more in exchange for partially abandoning continuous voyage than it was willing to concede. The doctrine continued to apply to absolute contraband and Britain obtained significant restrictions on destruction of neutral prizes. Britain also received important compensation in the agreed lists of absolute and conditional contraband and 'free' goods. Those lists, which included foodstuffs and fuel as conditional contraband and all manner of raw materials as 'free' goods, favoured Britain when it was a neutral, and would limit issues with neutrals as experienced in 1899-1900 and 1904-1905. Far from indicating incompetence, the analyses prepared by Slade and others in the Admiralty on the topics for the conference reveal a solid grasp of the essential issues and provide a sound basis for the positions ultimately adopted.

[134] N. Lambert (2012), 1, 4, 96-100, 134.

Offer's and Lambert's reliance on Fisher's views on the laws of warfare – and in Lambert's case the Admiralty's alleged views as well – ignore the fact that neither Fisher nor the Admiralty could decide to ignore international law during time of war. Only the British government, not some individual or even a department, could make a decision of such importance.[135] Even Hankey recognized that views such as those held by Fisher and others in the Admiralty – 'that in time of war these international treaties will at once be swept away' – were 'delusive and dangerous.'[136] Fisher surely understood from his experiences at the 1899 Conference and the events during the South African War and the Russo-Japanese War that international agreements once made were not easily ignored. He often made outlandish statements for effect and possible deterrence. Lambert also relies on Fisher's statement, which he incorrectly describes as 'scrawled' on an official paper that 'the inevitable result of Conferences and Arbitrations is that we always give up something. It's like a rich man entering into a Conference with a gang of burglars!'[137] In context, Fisher's statement likely was written in advance of the 1907 Conference given the reference to 'private property at sea' immediately preceding the quotation. Fisher had a visceral, 'old-school' reaction to any laws of warfare. As Viscount Esher recorded in his diary, 'Jacky is furious at our yielding points to other powers at the Naval Conference.'[138] However, anger and outlandish statements by Fisher do not establish a hidden agenda to tear up the Declaration of London or ignore the laws of warfare if war came. Instead, Fisher's statements reflected 'frustration and impotence.'[139] Moreover, while Fisher may well have been focused on Lord Charles Beresford's charges and discussions regarding the future naval building program during the same period, the documents show he reviewed and approved many if not all of the positions taken by Slade, Ottley, and the Admiralty at the conference. Indeed, Fisher could not be 'furious' at what was occurring at the conference unless he knew what was happening there.

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[135]Ibid., 752-753. Lambert recognizes this fact but dismisses it. See N. Lambert (2012), 100.

[136] Hankey, 'Effect on Food Supply', Feb. 1911, HNKY 7/5, f. 12, Hankey Papers.

[137] N. Lambert (2012), 98-99 (quoting Fisher, 'WAR PLANS and The DISTRIBUTION of the FLEET', n.d., p. 9, ADM 116/1043 B1).

[138] Esher diary, 6 Jan. 1909, *ESHR* 2/12.

[139] Martin, 'Declaration of London', 753.

Finally, Nicholas Lambert simply ignores evidence that does not support his theory – and that essentially is all of it.[140] In his view, 'approvals' really are not approvals. Fisher's alleged strong objections to the conference are contradicted by his approval of minutes and memoranda by Slade and others. Lambert asserts that McKenna misled the Commons in 1911 when he unequivocally stated that Fisher and the Admiralty were consulted and approved the Declaration.[141] Such a serious charge should have some foundation in fact. Lambert ignores the facts that Slade, Lord Desart, and Ottley supported the Declaration, even when it subsequently was criticized.[142] Given the United States' ratification of the Declaration, it must have been wrong, too, under Lambert's theory. A more appropriate conclusion is that Britain's rejection of the Declaration of London was a good deal lost.

Enactment of the Naval Prize Bill to implement the provisions of the Declaration ultimately failed in December 1911 due to politics and the decision of the predominately Conservative House of Lords 'to treat the bill as a partisan issue.'[143] Less than a year later, the government formed a committee to revise the rules for prize courts. In addition, the Admiralty incorporated the substance of the Declaration in its *Handbook for Boarding Officers and Prize Officers in War Time*.[144] 'Thus, the Declaration of London provided the rules of engagement for trade control on the

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[140] Matthew Seligmann has shown that other of Lambert's arguments 'hinge[] on declaring a substantial body of documentation – documentation that told a different story – inadmissible.' Seligmann, 'Naval History by Conspiracy Theory', 974.

[141] McKenna's unequivocal statements regarding the declaration, Fisher, and the Board of Admiralty are at *Hansard* 5th ser., HC Deb., vol. 27, cols. 407-408, 547-548 (28 June 1911).

[142] See, for example, Earl of Desart, 'Memorandum Respecting the Effect of Some of the Provisions of Declaration of London, 1909', 14 Dec. 1910, copy in MRF 39/1, Slade Papers.

[143] Coogan (1981), 136.

[144] See Admiralty Permanent Secretary, 'Proposed new reference to Naval Prize Law Committee as reconstituted', 27 Nov. 1912, ADM 116/1231A, reprinted in Tracy, ed., *Sea Power and the Control of Trade*, 163; Admiralty, 'Handbook for Boarding Officers and Prize Officers in War Time', 1914, ADM 186/11, reprinted in ibid., 164-176.

outbreak of the First World War.'[145] Despite its rejection by the House of Lords, the Declaration of London still had some vitality in August 1914.

Conclusion

Unable to obtain an agreement at the 1907 Conference on the issues of contraband and blockade, and realizing that the International Prize Court convention failed to provide the law applicable in the absence of a treaty, Great Britain proposed the London Naval Conference for a few, key sea powers. Its preparations were detailed and careful. Britain grasped the inconsistencies between its asserted positions on the laws of naval warfare and British legal precedents. It understood that rules from wars long ago needed to be modernized in light of technological changes. It entered the conference knowing it likely would have to compromise on some of its long-held positions to achieve a unanimous statement of the laws of naval warfare, but rightly believed compromises could be made without jeopardizing its critical belligerent rights. Britain would gain if an agreed international declaration of the laws of naval warfare existed, whether it was a neutral or belligerent in any future war. It did not want to repeat its experiences from the South African War or the Russo-Japanese War.

In contrast, the US approached the London Conference with little preparation. It relied on positions developed at the turn of the century in the Naval War Code of 1900, with amendments suggested in 1903. It did not compare its views to those of other countries or consider compromises it could make without harming its neutral or belligerent rights. Decisions had to be made on a rush basis during the conference. Faced with the need to negotiate concessions or render the conference nugatory, the US initially stood its ground, but eventually, grudgingly compromised. It reached conclusions regarding the modern usefulness of the doctrine of continuous voyage and necessary modifications to the law of blockade in light of technological developments consistent with Britain's analyses.

The outcome of the conference was a declaration that significantly increased Britain's rights as a neutral, yet protected necessary belligerent rights in light of modern conditions. The Declaration of London was a reasonable agreement and

[145] Ibid., 125.

favourable to Britain.[146] The fact that ratification ultimately failed due to opposition by the Conservative House of Lords and others does not detract from its merits. The primary arguments made by opponents against the Declaration do not withstand scrutiny. Historians have wrongly criticized the Admiralty, Edmond Slade, and Fisher for the positions taken at the London Conference and its outcome. Historians have sought to tar them with allegations of incompetence or mendacity. However, a careful analysis that does not ignore facts shows that the positions taken were rational and consistent with Britain's need to protect its ability to enforce a meaningful blockade in time of war, particularly with Germany. Slade, Ottley, McKenna, Greene, Lord Desart, Grey, and even Fisher were not wrong in their decisions and analyses regarding the Declaration. Stockton, Wilson, the General Board of the US Navy, and Scott at the State Department also were not wrong. The Declaration was a good deal lost when the House of Lords rejected it.

On the eve of the First World War, the US Naval War Code and the handbook for Royal Naval officers embodied the Declaration's essential terms. The Declaration of London had greater relevance to the belligerents than the nearly sixty-year old Declaration of Paris. Its status was much like the United States' current position on the United Nations Convention on the Law of the Sea: not ratified, but most of it accepted as customary international law. After the war started, the United States asked all the belligerents to adhere to the Declaration.[147] Britain alone responded that it would 'adopt generally the rules of the Declaration … subject to certain modifications and additions'.[148] Those 'modifications and additions' initially were a new list of contraband, application of the doctrine of continuous voyage to any contraband cargo, and a change in the burden of proof to be applied by prize courts in deciding whether a seizure was lawful.[149] The United States objected to these

[146] Editorial Comment, 'Naval Prize Bill and the Declaration of London', *The American Journal of International Law* 6, no. 1 (Jan. 1912): 180-186.

[147] Bryan to American Ambassadors in London, St. Petersburg, Paris, Berlin, Vienna, and Brussels, 6 Aug. 1914, box 14, folder 2, JBScott/Georgetown Papers.

[148] American Ambassador to Bryan, 24 Aug. 1914, ibid.

[149] Tracy, ed., *Sea Power and the Control of Trade*, 125-126.

changes as inconsistent with the letter and spirit of the Declaration.[150] As Imperial Germany began to violate the laws of war on land, and later the laws of naval warfare, Britain countered by backing further away from the provisions of the Declaration until July 1916, when it finally announced that it would not apply the Declaration at all.[151]

During the First World War, James Brown Scott described the Declaration of London as the 'high tide, historically, of the liberalization' of the laws of naval warfare.[152] The Declaration was not a 'liberalization', but a hard fought statement of the laws of naval warfare, unanimously agreed by the most significant naval powers of the time. Nevertheless, the 'tide' of the laws of naval warfare that started to flood in 1899 indeed crested and began to ebb in 1909.

[150] Scott, Draft reply, Inclosure to Scott to Lansing, 17 Sept. 1914, box 14, folder 2, JBScott/Georgetown Papers.

[151] Tracy, ed., *Sea Power and Control of Trade*, 127-128. See generally Coogan (1981), 169-236.

[152] James Brown Scott, 'Prefatory Note', in Scott, ed., *London Declaration*, i.

Conclusion

For too long pre-First World War naval historians have ignored or minimized the relevance of the laws of naval warfare to their research. We are told that the First World War 'erased' the pertinence of the laws of warfare.[1] Perhaps obscured by the failure of the belligerents to adhere to the laws of warfare during the First World War, many naval historians have focused only on small pieces of the puzzle that is the laws of naval warfare. In effect, they have begun their examination of the story in the middle of the book – around 1905 – instead of starting at the beginning in 1899, thereby losing much of the context for later events. Other historians have minimized the significance of the laws of naval warfare due to incompatibility with their arguments, and have tried to explain away the studies and analyses of limitations on naval warfare on the ground that no country, and certainly not Britain and the Royal Navy, ever expected to follow them. However, the First World War was a conflict the magnitude and nature of which no pre-war planner seriously contemplated. It was a 'total war' unlike any ever faced by any nation. Looking backward requires a clear and unbiased view of events of the period under study, not reflection through a tinted glass.

The 1899 Conference ushered in a new era of international law, especially for the laws of war. It again adopted conventions to which nations not in attendance could accede, thereby building upon the foundation for the development of international law established with the Declaration of Paris in 1856.[2] Although the tangible accomplishments of the 1899 Conference seemed limited, 'the precedents it established … paved the way for further advances in international law'.[3] This was especially true regarding the laws of naval warfare. Since 1856, Great Britain had consistently refused to discuss the laws of maritime warfare at any international

[1] Isabel V. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (Ithaca, NY: Cornell University Press, 2014), 3.

[2] Lemnitzer (2014), 3.

[3] Daniel Hucker, 'British Peace Activism and "New" Diplomacy: Revisiting the 1899 Hague Peace Conference', *Diplomacy & Statecraft* 26, no. 3 (Oct. 2015): 405, 418-420.

conference. Without Britain's willingness to discuss international maritime law at the 1899 Conference, naval strategic planning as well as international law would have followed a far different trajectory in the fifteen years preceding the First World War. Once the door was opened in 1899, it could not be closed.

Between the 1899 Conference and the commencement of the 1907 Conference, Great Britain and the United States – and their navies – undertook considerable examination and analysis of international law and its relationship to naval warfare and strategy. The US Naval War College intensely studied the implications of the laws of war for naval planning through its annual *International Law Situations*.[4] In Britain, Professor Thomas Holland engendered debate on the laws of naval warfare in light of the US Naval War Code of 1900 and through his participation on, and testimony before, the Royal Commission on Supply of Food and Raw Material in Time of War. Cambridge University Professor Lassa Oppenheim published his treatise on international law.[5] Great Britain and the United States received lessons on the practical application of the laws of naval warfare from the South African and Russo-Japanese wars – lessons that would impact naval planning and the willingness of belligerents to adopt measures that would adversely impact neutrals in future wars.

The 1907 Conference resulted in the adoption of thirteen conventions, twelve of which entered into force. Of those, eight related in whole or in part to naval warfare. Five of them still are part of the fabric of the laws of war over 100 years later.[6] However, it was Britain's failure to achieve agreement on contraband, blockade, and the law to be applied by the planned International Prize Court that furthered discussion of the laws of naval warfare. The result was the 1909 Declaration of London: a statement by the leading sea powers of what the laws of maritime warfare were, not what they might be in the future. Although Britain did not

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[4] See generally United States Naval War College, *General Index to International Law Situations: Topics and Discussions, Volumes I to X, 1901-1910* (Washington, DC: GPO, 1912).

[5] See, for example, Lassa Oppenheim, *War and Neutrality*, vol. II of *International Law: A Treatise* (London: Longmans, Green, 1906).

[6] See Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, 3rd ed. (Oxford, UK: Oxford University Press, 2000), 67-138.

ratify the Declaration, both the Royal Navy and the US Navy essentially incorporated it into their respective handbook and code for naval officers prior to the First World War.

The First World War did not result in the immediate abandonment of the laws of war, at least not regarding naval warfare. When the war began, Britain confirmed that it would generally adhere to the principles of the Declaration of London. Britain did not immediately renounce the Declaration or its applicability. The fact Britain sought to expand the continuous voyage doctrine far beyond its recognized scope or as stated in the Declaration of London during the war does not detract from its importance. The Declaration provided guidance and some framework for belligerents and neutrals. Moreover, Imperial Germany first violated the laws of war on land, not at sea. Britain receded from the Declaration gradually, and often as the *quid pro quo* for some violation of the laws of war by Germany. Only after nearly two years of war, in July 1916, and after the US by its relative inaction in response to Britain's treatment of neutral shipping had made clear it would not join the conflict on the side of Germany, did Britain completely abandon the 1909 Declaration. Thus, the discussions and development of the laws of naval warfare between 1899 and 1909 impacted at least the initial years of the First World War, and also the years since. The laws of naval warfare were not abandoned at the commencement of hostilities. International law mattered.

Between 1899 and 1909, the laws of naval warfare influenced naval planning and strategy in Great Britain and the United States. 'In 1899, both Britain and the United States were wedded to fossilized policies on maritime rights.'[7] However, their perspectives and starting points were quite different. Britain was still the acknowledged world's superpower at sea. But much as in 1856, it was 'aware of the danger that its lead as the dominant global power was slipping away.'[8] The United States – excluding Alfred Thayer Mahan – still was focused on maintaining its rights as a neutral without a blue-water navy. For Britain, the proposed international conference in 1899 was the catalyst for a secret naval disarmament proposal to Russia. The Royal Navy viewed the government's acceptance of the conference with

[7] Coogan (1981), 237.

[8] Lemnitzer (2014), 173.

dismay, realizing that the door was now opened for discussions on limitations on the conduct of naval warfare. The US saw the Tsar's invitation as an opportunity to lobby the international community again for acceptance of its long-cherished immunity policy. In 1899, Britain sought to ban submarines, because they were weapons of the weak and represented a challenge to its naval supremacy. At the 1899 Conference, Mahan infamously ensured that poison gas shells were not outlawed, with massive consequences fifteen years later in the First World War.

The South African and Russo-Japanese wars taught the US and Britain that insistence on respect for international law could force belligerents to change their naval strategies. International maritime laws could not be ignored or stretched in the face of objections from strong neutrals. The lessons learned during those wars influenced positions in both countries through the 1909 London Conference. The US Naval War College prepared a code of naval warfare intending for it to be the framework for a global undertaking. It dropped it after realizing that its lone adherence to the Code would place it at a disadvantage in war. In Britain, the Royal Commission on Supply of Food and Raw Materials in Time of War concluded that international law would act as a restraint on naval warfare, largely based on the Commission's reading of evidence presented by the Admiralty.

At the 1907 and 1909 conferences, Britain no longer was the exclusive master of the house in international maritime law. It could no longer act unilaterally and with little regard for other navies as it searched for a legal framework that would allow it to exercise its naval strategy. It therefore needed to compromise on key issues. Britain sought to balance its needs as a neutral with the maintenance of belligerent rights it wanted to exercise in a modern war. It endeavoured to restrict and itemize what products could be considered contraband and therefore subject to seizure. Conversion of merchant ships into warships on the high seas – essentially becoming modern and more lethal privateers – became an important issue that the laws of naval warfare might limit or even outlaw. During the preparations for the 1907 Conference, the US and Britain came astonishingly close to switching their positions on the principle of the immunity of private property at sea during war, an issue that had divided them for over a century. When efforts at coordination failed, the two nations clashed at the 1907 Conference. Realizing that modern technologies

made its traditional weapon of a close blockade virtually impossible, Britain first tried to abolish the concept of contraband in exchange for a favourable definition of an effective blockade at the 1907 Conference. When that effort failed, it called for a conference of the major sea powers and obtained recognition of an area of operations for blockades that ensured their continued viability for naval planning. Unlike the 1899 and 1907 conferences, which proposed new international law, the Declaration Concerning the Laws of Maritime War signed in London in February 1909 was a unanimous statement of the laws of naval warfare as agreed at that time with which Britain and the US agreed. Although both nations had embarked on the journey from different starting points in 1899, over the following ten years their positions and views gradually had coalesced. Great Britain's objective was to determine laws of naval warfare that would allow it to maintain its ability to defend and protect itself and its empire whether as a belligerent or a neutral. For the US, its path was one of increasing recognition of its greater role on the world's stage and need for a larger navy. It no longer could focus primarily on neutral rights; its rights as a belligerent mattered, too.

By presenting a study of the laws of naval warfare covering the 1899-1909 period, this thesis returns them to their rightful place as an important factor in naval planning in the years preceding the First World War. It has significant implications for revisionist historians such as Nicholas Lambert. Relying to a great extent on Admiral Sir John Arbuthnot Fisher's often outlandish pronouncements against the laws of warfare generally and limitations on maritime conflict specifically, Lambert's most recent book ignores inconsistent facts, engages in baseless speculation, and fails to address the Admiralty's substantial efforts to direct and influence the laws of naval warfare before and during Fisher's leadership as First Sea Lord. Lambert's analysis of Britain's preparations for the 1907 Conference and the reasoning behind the positions taken at the 1909 London Conference are mistaken. The simplistic descriptor that '"Jacky" Fisher was no respecter of the laws of war'[9] has no real place in pre-First World War naval history. Fisher's statements often were tied to his belief in deterrence as a means to avoid wars. He certainly could not determine Britain's

[9] Offer (1989), 270; Avner Offer, 'Morality and Admiralty: "Jacky" Fisher, Economic Warfare and the Laws of War', *Journal of Contemporary History* 23, no. 1 (Jan. 1988): 100.

policies or decide to ignore a binding international agreement. Neither the British government nor the Admiralty organized interdepartmental committees and spent many man-hours of work studying the laws of naval warfare and what positions to adopt for no real purpose. 'Britain took law enormously seriously'.[10] The United States and its Navy did as well. The extensive analysis and debate on both sides of the Atlantic belie the notion that the laws of naval warfare were of little or no moment in naval thinking or planning. The gentlemen – and they were all 'gentlemen' in the classical sense – charged with governing nations, running departments, and leading navies, would not simply tear up international agreements the moment war came. A gentleman's word was his bond.

By showing the importance of the laws of naval warfare on planning and strategy in Great Britain and the United States between 1899 and 1909, this thesis fills a void in the current, vibrant research on naval planning and preparations in the years before the First World War. Naval historians have ignored the 1899 Conference. But it set the stage for every international conference that came after. Britain's offer of naval disarmament to Russia provides a specific, concrete example of the effect of finance on the Royal Navy in 1899, as well as an indication of the government's concern regarding commerce raiding as the rationale for building more fast cruisers. Prime Minister Salisbury's government was willing to trade ships for pounds Sterling – at least with Russia – and failing that, would build more cruisers to protect its far-flung maritime commerce. These facts further illustrate the effect of finance on subsequent naval reforms and the Royal Navy's focus on a *guerre de course* as a real threat.[11] Mahan's role in the debates surrounding the laws of maritime war during this period has generally been ignored. Studies of Mahan have focused on his contributions as 'a naval historian and theorist of naval operations'.[12] His efforts to alter the policies of the United States toward the immunity of private property at sea and to attain close cooperation between the US and Britain have been extensively

[10] Hull, *A Scrap of Paper*, 194.

[11] See, for example, Sumida (1989), 19-23; Nicholas Lambert, *Sir John Fisher's Naval Revolution* (Columbia, SC: University of South Carolina Press, 1999), 21-29.

[12] John H. Maurer, 'Mahan on World Politics and Strategy: The Approach of the First World War, 1904-1914', in *The Influence of History on Mahan*, ed. John B. Hattendorf (Newport, RI: Naval War College Press, 1991), 157.

revealed for the first time. Neo-revisionist historians such as Christopher Bell, Matthew Seligmann, and others have begun to take a fresh, more complete look at pre-First World War naval planning.[13] This thesis furthers their work and provides new perspectives that must be considered.

By engaging in a comparative analysis, this thesis provides an under-utilized perspective in naval history.[14] Britain and the US ended the nineteenth century in far different positions in terms of naval power. By 1909, their positions as sea powers were far more similar. The US had become an imperial nation, and while its empire was not as vast as that of Britain, it faced potential conflicts in the far reaches of its realm, which required the projection of naval power. Its navy had grown considerably since 1899. The 1899 Conference, when their naval power was most disparate, saw the best cooperation between Great Britain and the United States at any of the international conferences. Their positions were consistent at the 1899 Conference because Britain and the Royal Navy wanted to maintain as much as possible their belligerent rights, while Mahan acted independently of the US government to ensure that the US Navy would have the ability to develop into the blue-water fleet he envisioned. The theoretical studies after the 1899 Conference and the practical experiences in two wars caused Britain to turn more toward neutral rights. The United States' studies and experiences reinforced its traditional pro-neutral rights stance. Despite Mahan and Fisher's ultimately successful efforts to undermine support for the immunity of private property at sea during the preparations for the 1907 Conference, efforts at cooperation at that conference and the 1909 London Conference essentially failed. By the 1909 Conference, Britain was willing to compromise on some belligerent rights in order to obtain an agreement on the

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[13] See, for example, Christopher M. Bell, 'Sir John Fisher's Naval Revolution Reconsidered: Winston Churchill at the Admiralty, 1911-1914', *War in History* 18, no. 3 (2011): 333-356; Matthew S. Seligmann, 'Naval History by Conspiracy Theory: The British Admiralty before the First World War and the Methodology of Revisionism', *The Journal of Strategic Studies* 38, no. 7 (Nov. 2015): 966-984; Matthew S. Seligmann and David Morgan-Owen, 'Evolution or Revolution? British Naval Policy in the Fisher Era', *The Journal of Strategic Studies* 38, no. 7 (Nov. 2015): 937-943.

[14] See Paul G. Halpern, 'Comparative Naval History', in *Doing Naval History: Essays Toward Improvement*, ed. John B. Hattendorf (Newport, RI: Naval War College Press, 1995), 75-92.

existing laws of naval warfare. The US ultimately conceded traditional positions more grudgingly. It was turning into the naval power Britain had been.

This thesis has examined the evolution of naval thinking in the United States and Great Britain in the early twentieth century from a new perspective. Fundamental to the way naval power is exercised is the legal basis for that use. This study has examined the development of the laws of war as applied to naval warfare and their influence on what became the basis for the exercise of American and British sea power in the twentieth century and today. By engaging in a comparative study and examining and analysing the laws of war and naval planning in Great Britain and the United States during the 1899-1909 period, this thesis fills a void in the existing research, provides insights into the influence of the laws of war on naval planning in two disparate navies during a critical period of naval history, and reveals aspects of maritime history not previously studied. It should also thereby inform the twenty-first century's on-going debate regarding the laws of war and their implications for military planning and strategy.

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